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HUGHES Telematics, Inc.
Form 424B3
December 31, 2009

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SUPPLEMENT NO. 3 TO PROSPECTUS DATED AUGUST 19, 2009

THE DATE OF THIS SUPPLEMENT IS DECEMBER 31, 2009

On December 22, 2009, HUGHES Telematics, Inc. filed the attached Current Report on Form 8-K with the
Securities and Exchange Commission

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the

Securities Exchange Act of 1934

Date of report (Date of earliest event reported): December 22, 2009 (December 17, 2009)

HUGHES Telematics, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

001-33860
(Commission
File Number)

41 Perimeter Center East, Suite 400

26-0443717
(IRS Employer

Identification Number)

30346

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Atlanta, Georgia
(Address of Principal Executive Offices)

(Zip Code)

Registrant's telephone number, including area code: (770) 391-6400

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

On December 17, 2009 (the Closing Date), HUGHES Telematics, Inc. (the Company) entered into a credit agreement (the Second Lien Credit Agreement) with Plase HT, LLC (Plase), as administrative agent, collateral agent and original lender, pursuant to which Plase made a \$15.0 million loan to the Company and was issued a warrant as described in greater detail in Item 2.03 below. In addition, on December 18, 2009, the Company converted an approximately \$8.3 million trade payable balance owed to Hughes Network Systems, LLC (HNS) into a senior unsecured promissory note (the HNS Note) as described in greater detail in Section 2.03 below.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

On the Closing Date, the Company entered into the Second Lien Credit Agreement with Plase, as administrative agent, collateral agent and original lender, pursuant to which Plase made a \$15.0 million loan to the Company. Plase is an affiliate of Apollo Global Management, LLC, the Company s controlling stockholder. The loans under the Second Lien Credit Agreement bear interest at 9.0% per annum, payable-in-kind, and are guaranteed by all of the Company s existing and future domestic subsidiaries. The loans are secured by a second priority lien on substantially all of the Company s tangible and intangible assets, including the equity interests of the Company s subsidiaries. The liens granted in connection with the Second Lien Credit Agreement are expressly subject and subordinated to the liens securing the Company s obligations under its Amended and Restated Credit Agreement dated as of March 31, 2008 (the First Lien Credit Agreement) with Morgan Stanley Senior Funding, Inc. as administrative agent, Morgan Stanley & Co. Incorporated, as collateral agent, and the lenders from time to time party thereto.

In connection with the Second Lien Credit Agreement, the Company issued Plase a warrant to purchase 3,000,000 shares of the Company s common stock at an exercise price of \$6.00 per share (the Warrant) and entered into a customary registration rights agreement (the Registration Rights Agreement).

The covenants contained in the Second Lien Credit Agreement are substantially the same as those in the First Lien Credit Agreement. The Second Lien Credit Agreement requires the Company to comply with negative covenants which include, among others, limitations on the Company s ability to incur additional debt; create liens; pay dividends or make other distributions; make loans and investments; sell assets; redeem or repurchase capital stock or subordinated debt; engage in specified transactions with affiliates; consolidate or merge with or into, or sell substantially all of its assets to, another person; and enter into new lines of business. The Company may incur indebtedness beyond the specific limits allowed under the Second Lien Credit Agreement, provided it maintains a leverage ratio of less than 5.0 to 1.0. The events of default under the Second Lien Credit Agreement include, among others, payment defaults; defaults under, or acceleration of, certain indebtedness; termination of the Company s contract with Mercedes-Benz USA, LLC; breaches of covenants or representations and warranties; certain ERISA events; certain judgments; and bankruptcy and insolvency events. The occurrence of an event of default could result in the acceleration of the obligations under the Second Lien Credit Agreement.

In addition, on December 18, 2009, the Company converted an approximately \$8.3 million trade payable balance owed to HNS into the HNS Note. Such promissory note will accrue interest at a rate of 12% per annum and become due and payable on December 31, 2010. The Company is required to make scheduled principal payments of approximately \$0.8 million on April 15, 2010 and \$1.5 million on each of July 15, 2010 and October 15, 2010. In addition, subject to all restrictions in the First Lien Credit Agreement and Second Lien Credit Agreement and certain other limitations, to the extent the Company sells any capital equipment purchased by the Company (or purchased by HNS on the Company's behalf) for use in connection with the Telematics Agreement between the parties, but no longer needed by the Company, the Company shall make unscheduled prepayments of principal on the promissory note equal to the proceeds from the sale of such capital equipment (net of any selling costs).

The description of the Second Lien Credit Agreement and the Warrant, the Registration Rights Agreement and the HNS Note contained herein is qualified in its entirety by reference to the full text of such documents, copies of which are filed as exhibits hereto and are incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

On December 17, 2009, in connection with the execution of the Second Lien Credit Agreement, as described in Item 2.03 of this 8-K, the Company issued Plase a warrant to purchase 3,000,000 shares of common stock of the Company for \$6.00 per share, subject to certain customary anti-dilution provisions. The warrant expires on December 17, 2014. In addition, the Company executed the Registration Rights Agreement in connection with the issuance of the Warrant.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Exhibit Title
99.1	Second Lien Credit Agreement dated as of December 17, 2009 among HUGHES Telematics, Inc., Plase HT, LLC as administrative agent and collateral agent, and the lenders from time to time party thereto.
99.2	Second Lien Guaranty and Collateral Agreement dated as of December 17, 2009 among HUGHES Telematics, Inc., the subsidiaries of HUGHES Telematics, Inc. identified therein and Plase HT, LLC as collateral agent.
99.3	Warrant to purchase 3,000,000 shares of common stock at \$6.00 per share, dated as of December 17, 2009, issued to Plase HT, LLC, expiring December 17, 2014
99.4	Senior Unsecured Promissory Note, dated December 18, 2009, in the principal amount of approximately \$8.3 million issued to Hughes Network Systems, LLC

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: December 22, 2009

HUGHES TELEMATICS, INC.

By: /s/ CRAIG KAUFMANN
Name: **Craig Kaufmann**
Title: **Vice President Finance and Treasurer**

Exhibit Index

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99.4	Senior Unsecured Promissory Note, dated December 18, 2009, in the principal amount of approximately \$8.3 million issued to Hughes Network Systems, LLC.

\$15,000,000

(and up to \$7,500,000 Incremental Loans as provided herein)

SECOND LIEN CREDIT AGREEMENT

among

HUGHES TELEMATICS, INC.,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

PLASE HT, LLC,

as ADMINISTRATIVE AGENT

and

PLASE HT, LLC,

as COLLATERAL AGENT

Dated as of December 17, 2009

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SECOND LIEN CREDIT AGREEMENT, dated as of December 17, 2009, among HUGHES Telematics, Inc., a Delaware corporation (the Borrower), the Lenders party hereto from time to time, Plase HT, LLC, as Administrative Agent and Plase HT, LLC as Collateral Agent. All capitalized terms used herein and defined in Section 1 are used herein as therein defined.

WITNESSETH:

WHEREAS, the Borrower, the First-Lien Lenders (as defined below), Morgan Stanley Senior Funding, Inc., as administrative agent and Morgan Stanley & Co. Incorporated, as collateral agent, are parties to the First-Lien Credit Agreement (as defined below) pursuant to which certain first-lien term loans have been extended;

WHEREAS, the Borrower has requested that the Lenders extend credit in the form of second lien term loans, the proceeds of which will be used for the general corporate purposes of the Borrower and its Subsidiaries;

WHEREAS, the Lenders are willing to make such second lien term loans upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, the Borrower, the Lenders, the Administrative Agent and the Collateral Agent hereby agree as follows:

SECTION 1. Definitions and Accounting Terms.

1.01. Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

Additional Funding Event shall mean (i) the incurrence of Incremental Loans, (ii) the incurrence of Indebtedness under Sections 8.04(b)(x), (xii) or (xiv) (with respect to clause (xiv) only, to the extent such Indebtedness (A) does not provide for an obligation requiring the payment of interest in cash prior to the date which occurs six months after the Maturity Date (except in connection with any acceleration of the maturity thereof or required offers to purchase such Indebtedness (based on a Change of Control or Asset Sales) which would not violate or conflict with the requirements of this Agreement, and which first allow the repayment of Indebtedness hereunder or a result thereof), and (B) shall not have any required amortization (or sinking fund payments or similar events) occurring prior to the date occurring six months after the Maturity Date (unless there is a default or event of default thereon), (C) shall not mature earlier than the date occurring six months after the Maturity Date) and/or (iii) the issuance of Equity Interests of the Borrower.

Additional Security Documents shall have the meaning provided in Section 7.12(b).

Adjusted Consolidated Net Income shall mean, for any period, Consolidated Net Income for such period plus the sum of the amount of all net non-cash charges (including, without limitation, depreciation, amortization, deferred tax expense and non-cash interest expense and net non-cash losses which were included in arriving at Consolidated Net Income for such period) less the amount of all net non-cash gains and non-cash credits which were included in arriving at Consolidated Net Income for such period.

Adjusted Consolidated Working Capital shall mean, at any time, Consolidated Current Assets (but excluding therefrom all cash and Cash Equivalents) less Consolidated Current Liabilities at such time.

Administrative Agent shall mean Plase HT, LLC in its capacity as Administrative Agent for the Lenders hereunder and under the other Credit Documents, and shall include any successor to the Administrative Agent appointed pursuant to Section 10.09.

Affiliate shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; provided, however, that none of the Administrative Agent, any Lender or any of their respective Affiliates shall be considered an Affiliate of the Borrower or any Subsidiary thereof.

Affiliate Transaction shall have the meaning provided in Section 8.06(a).

Agents shall mean and include the Administrative Agent and the Collateral Agent.

Agreement shall mean this Credit Agreement, as modified, supplemented, amended, restated (including any amendment and restatement hereof), extended or renewed from time to time.

Applicable Excess Cash Flow Prepayment Percentage shall mean, at any time, 50%; provided that, so long as no Default or Event of Default is then in existence (i) if the Total Leverage Ratio is less than 5.0:1.0 (as set forth in the Compliance Certificate delivered pursuant to Section 7.01(f) for the fiscal quarter or fiscal year, as the case may be, of the Borrower then last ended for which financial statements are available), the Applicable Excess Cash Flow Prepayment Percentage shall instead be 25%, and (ii) if the Total Leverage Ratio is less than 3.5:1.0 (as set forth in the Compliance Certificate delivered pursuant to Section 7.01(f) for the fiscal quarter or fiscal year, as the case may be, of the Borrower then last ended for which financial statements are available), the Applicable Excess Cash Flow Prepayment Percentage shall instead be 0%.

Applicable Increased Term Loan Rate shall mean, at any time, with respect to any then existing Initial Loans at the time of the provision of any new Incremental Loans pursuant to Section 2.14 that are subject to an interest rate per annum that is less than the interest rate applicable to such new Incremental Loans, the rate per annum determined by the Administrative Agent (and notified to the Borrower and the Lenders) to be equal to the rate per annum applicable to such new Incremental Loans. Each determination of the Applicable Increased Term Loan Rate shall be made by the Administrative Agent taking into account the relevant factors outlined in subclause (vii) of Section 2.14(a) and shall be conclusive and binding on the Borrower and all Lenders absent manifest error.

Applicable Margin shall mean (i) in the case of any Initial Loan, (x) initially, the PIK Interest Rate and (y) if the Applicable Margin applicable to Initial Loans is increased in accordance with Section 2.14(a), the Applicable Increased Term Loan Rate then in effect and (ii) in the case of any Incremental Loan of a given Tranche that is not an Initial Loan, that percentage per annum (which must be paid in kind in the manner provided by Section 2.08(a)) set forth in, or calculated in accordance with, Section 2.14 and the relevant Incremental Loan Commitment Agreement.

Asset Acquisition shall mean (1) an Investment by the Borrower or any Restricted Subsidiary of the Borrower in any other Person pursuant to which such Person shall become a Restricted Subsidiary of the Borrower or any Restricted Subsidiary of the Borrower, or shall be merged with or into the Borrower or any Restricted Subsidiary of the Borrower, or (2) the acquisition by the Borrower or any Restricted Subsidiary of the Borrower of the assets of any Person (other than a Restricted Subsidiary of the Borrower) which constitute all or substantially all of the assets of such Person or comprise any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business.

Asset Sale shall mean any sale, transfer, issuance or other disposition (or series of related sales, transfers, issuances or dispositions) by the Borrower or any Restricted Subsidiary, including any disposition by means of a merger, amalgamation, arrangement, consolidation or similar transaction (each referred to for the purposes of this definition as a disposition), of:

(a) any shares of Equity Interests of a Subsidiary (other than directors qualifying shares or shares required by applicable law to be held by a Person other than the Borrower or a Restricted Subsidiary);

(b) all or substantially all of the properties and assets of any division or line of business of the Borrower or any Subsidiary; or

(c) any other assets of the Borrower or any Restricted Subsidiary outside of the ordinary course of business of the Borrower or such Restricted Subsidiary;

provided, however, that the following shall not constitute an Asset Sale for the purposes of this Agreement:

(i) any disposition by the Borrower or a Restricted Subsidiary to (A) the Borrower, (B) a Restricted Subsidiary (which is a Guarantor), (C) any other Person (if after giving effect to such disposition such other Person becomes a Restricted Subsidiary (which is a Guarantor) or (D) to any Foreign Subsidiary pursuant to the reasonable requirements of, and in furtherance of, the Business Plan;

(ii) any disposition that constitutes a Permitted Investment or Restricted Payment permitted by Section 8.03;

(iii) any disposition effected in compliance with Section 8.05;

(iv) any sale or other disposition of cash or Cash Equivalents in the ordinary course of business;

(v) any disposition of obsolete, worn out or permanently retired equipment or facilities or other property that is no longer used or useful in the ordinary course of the business of the Borrower or any Restricted Subsidiary;

(vi) for purposes of Section 8.02 only, any Asset Sale other than a Material Asset Sale;

- (vii) the licensing or sublicensing of Intellectual Property or other general intangibles and licenses, leases or subleases of other property;
- (viii) any release of intangible claims or rights in connection with the loss or settlement of a bona fide lawsuit, dispute or other controversy;
- (ix) any sale or disposition deemed to occur in connection with creating or granting any Permitted Liens;
- (x) the surrender or waiver of contract rights or the settlement, release, surrender of contract, tort or other claims of any kind; and
- (xi) any sale or exchange of equipment in connection with the purchase or other acquisition of Replacement Assets of substantially equivalent or greater Fair Market Value (taken as a whole) and that are usable in a Related Business.

Assignment and Assumption Agreement shall mean an Assignment and Assumption Agreement substantially in the form of Exhibit I.

Authorized Officer shall mean, with respect to (a) delivering Notices of Borrowing, Notices of Conversion/Continuation and similar notices, any person or persons that has or have been authorized by the Board of Directors to deliver such notices pursuant to this Agreement and that has or have appropriate signature cards on file with the Administrative Agent, (b) delivering financial information, budgets and officer's certificates pursuant to this Agreement, the chief financial officer, the treasurer or the principal accounting officer of the Borrower, and (c) any other matter in connection with this Agreement or any other Credit Document, any officer (or a person or persons so designated by any two officers) of the Borrower.

Average Life shall mean, as of any date of determination, with respect to any Indebtedness or Preferred Equity, the quotient obtained by dividing:

(a) the sum of the products of (i) the number of years (rounded to the nearest one-twelfth of one year) from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Equity multiplied by (ii) the amount of such payment; by

(b) the sum of all such payments.

Bankruptcy Code shall have the meaning provided in Section 9.05.

Board shall mean the Board of Governors of the Federal Reserve System of the United States.

Board of Directors shall mean the board of directors of the Borrower and any relevant committees.

Borrower shall have the meaning provided in the first paragraph of this Agreement.

Borrower Common Stock shall mean the common stock issued by the Borrower with par value of \$0.01, or such other equity securities issued by the Borrower in replacement or substitution thereof.

Borrower Materials shall have the meaning provided in Section 11.03(b).

Borrowing shall mean the borrowing of a Loan on a given date.

Business shall mean any corporation, limited liability company, partnership or other business entity (or the adjectival form thereof, where appropriate) or the equivalent of the foregoing in any foreign jurisdiction.

Business Day shall mean any day except Saturday, Sunday and any day which shall be, in New York, New York, a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close.

Business Plan shall mean the business plan of the Borrower as discussed with the Lenders on or prior to the Closing Date, as such business plan may be modified with the prior consent of the Required Lenders (not to be unreasonably withheld, conditioned or delayed) in response to changes in relevant markets or other business opportunities relevant to the Related Business.

Capital Expenditures shall mean, with respect to any Person, all expenditures by such Person which should be included in property, plant and equipment, capitalized software or similar line items reflected in the financial statements in accordance with GAAP and, without duplication, the amount of all Capitalized Lease Obligations incurred by such Person.

Capitalized Lease Obligations shall mean, with respect to any Person, all rental obligations of such Person which, under GAAP, are or will be required to be included in property, plant and equipment or similar line items reflected in the financial statements of such Person, in each case taken at the amount thereof accounted for as indebtedness in accordance with such principles.

Cash Equivalents shall mean, as to any Person, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's, (c) Dollar-denominated time deposits, certificates of deposit and bankers acceptances of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least A or the equivalent thereof from S&P or A2 or the equivalent thereof from Moody's with maturities of not more than one year from the date of acquisition by such Person, (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (c) above, (e) commercial paper issued by any Person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by such Person, (f) pre-refunded bonds and bonds that are escrowed to maturity (backed 100% by United States Government Securities and/or cash), and (g) investments in money market funds rated at least AA or the equivalent thereof by S&P or Aa or the equivalent thereof by Moody's.

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same has been amended and may hereafter be amended from time to time, 42 U.S.C. § 9601 et seq.

Change in Law shall have the meaning provided in Section 9.06(a).

Change of Control shall mean the occurrence of any of the following events:

(a) the acquisition by any Person, other than one or more Permitted Holders, of beneficial ownership within the meaning of Rule 13d-3 promulgated under the Exchange Act, of more than 35% of the voting power of the Borrower's Outstanding Voting Securities (or the Outstanding Voting Securities of any successor entity);

(b) a majority of the individuals who, as of the Closing Date, constitute the members of the Board of Directors (the Incumbent Board) cease for any reason to serve on such Board of Directors; provided that any individual who becomes a director of the Borrower subsequent to the Closing Date, whose election, or nomination for election by the Borrower's stockholders, is approved: (i) at a time when a Permitted Holder beneficially owns more than 50% of the voting power of the Borrower's (or any successor's) Outstanding Voting Securities and/or (ii) by the vote of at least a majority of the directors then comprising the Incumbent Board, shall be deemed a member of the Incumbent Board; and provided, further, that any individual who was initially elected as a director of the Borrower as a result of an actual or threatened election contest, or any other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board of Directors shall not be deemed a member of the Incumbent Board;

(c) a sale of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, to any Person other than a Permitted Holder; or

(d) a change of control or similar event shall occur and require repayment of, or an offer to repay, any Indebtedness of the Borrower or any Restricted Subsidiary having an aggregate value in excess of \$10,000,000.

Change of Control Offer shall mean the offer to prepay the Loans pursuant to Sections 4.02(b) and (h) as a result of a Change of Control.

Claims shall have the meaning provided in the definition of Environmental Claims.

Closing Date shall mean December 17, 2009.

Closing Date Agents shall mean Plase HT, LLC, as Administrative Agent and Plase HT, LLC, as Collateral Agent.

Closing Date Lender shall mean any Lender of a Closing Date Loan.

Closing Date Loan shall have the meaning provided in Section 2.01(a).

Closing Date Loan Commitment shall mean, for each Lender, the amount set forth opposite such Lender's name in Schedule 1.01(a) directly below the column entitled Closing Date Commitments, as the same may be terminated pursuant to Sections 3.02 or 9, as applicable.

Closing Date Warrants shall mean, cumulatively, all warrants to purchase shares of Borrower Common Stock (i) which are issued to the any Closing Date Lender and/or its Affiliates on the Closing Date and (ii) which any Closing Date Lender and/or its Affiliates have the right to acquire pursuant to rights created or existing on the Closing Date, to the extent, as of any date of determination, shares of Borrower Common Stock underlying any such warrants or rights are issuable under the terms thereof.

Code shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to the Code are to the Code, as in effect at the date of this Agreement and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

Collateral shall mean all property (whether real or personal) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document, including, without limitation, all Collateral under and as defined in the Guaranty and Collateral Agreement and all Mortgaged Properties.

Collateral Agent shall mean Plase HT, LLC, in its capacity as Collateral Agent for the Lenders hereunder and under the other Credit Documents, and shall include any successor to the Collateral Agent appointed pursuant to Section 10.09.

Collateral and Guarantee Requirement shall mean, at any time, the requirement that:

- (a) the Obligations shall have been unconditionally guaranteed by the Borrower and each Wholly-Owned Restricted Subsidiary that is a Domestic Subsidiary;
- (b) the Obligations shall have been secured by a security interest (subject only to the priority of the First-Lien Obligations) in all Equity Interests of each Wholly-Owned Subsidiary directly owned by the Borrower or any Subsidiary Guarantor; provided that pledges of voting Equity Interests of each Foreign Subsidiary or controlled foreign corporation shall be limited to 65% of the total combined voting power of all Equity Interests of such Foreign Subsidiary or controlled foreign corporation at any time;
- (c) except to the extent otherwise permitted hereunder or under any Security Document, the Obligations shall have been secured by a security interest in, and mortgages on, substantially all tangible and intangible assets of the Borrower and each other Subsidiary Guarantor (including accounts, inventory, equipment, investment property, contract rights, Intellectual Property, other general intangibles, owned real property and proceeds of the foregoing), in each case, with the priority required by the Security Documents;
- (d) none of the Collateral shall be subject to any Liens other than Liens permitted by Section 8.01; and

(e) the Collateral Agent shall have received (i) counterparts of a Mortgage with respect to each Mortgaged Property duly executed and delivered by the record owner of such property, (ii) a policy or policies of title insurance issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a valid Lien on the property described therein, free of any other Liens except as expressly permitted by Section 8.01, together with such endorsements, coinsurance and reinsurance as the Administrative Agent may reasonably request, (iii) such existing surveys, existing abstracts, existing appraisals and other documents as the Administrative Agent may reasonably request with respect to any such Mortgaged Property and (iv) to the extent required by applicable law, flood certificates covering each Mortgaged Property in form and substance reasonably acceptable to the Collateral Agent, certified to the Collateral Agent in its capacity as such and certifying whether or not such Mortgaged Property is located in a flood hazard zone by reference to the applicable FEMA map.

Collective Bargaining Agreements shall have the meaning provided in Section 5.05.

Commitment shall mean any of the commitments of any Lender, i.e., an Initial Loan Commitment or an Incremental Loan Commitment.

Competitor shall mean any Person that provides telematics products or services and any Affiliate of such Person.

Compliance Certificate shall have the meaning provided in Section 7.01(e).

Consolidated Current Assets shall mean, at any time, the consolidated current assets of the Borrower and its Restricted Subsidiaries at such time.

Consolidated Current Liabilities shall mean, at any time, the consolidated current liabilities of the Borrower and its Restricted Subsidiaries at such time, but excluding the current portion of any Indebtedness under this Agreement and the current portion of any other long-term Indebtedness which would otherwise be included therein.

Consolidated EBITDA shall mean, for any period, Consolidated Net Income for such period (without giving effect to (a) any extraordinary gains or losses, (b) any non-cash income, (c) any gains or losses from sales of assets other than inventory sold in the ordinary course of business and (d) interest income), adjusted by adding thereto (in each case to the extent deducted in determining Consolidated Net Income for such period), without duplication, the amount of (i) total interest expense (inclusive of amortization of deferred financing fees and other original issue discount and banking fees, charges and commissions (e.g., letter of credit fees and commitment fees) of the Borrower and its Restricted Subsidiaries determined on a consolidated basis for such period, (ii) provision for taxes based on income and foreign withholding taxes for the Borrower and its Restricted Subsidiaries determined on a consolidated basis for such period, (iii) all depreciation and amortization expense of the Borrower and its Restricted Subsidiaries determined on a consolidated basis for such period and (iv) non-cash stock compensation expenses and other non-cash expenses for such period that do not result in future cash obligations or cash outlays. For the avoidance of doubt, it is understood and agreed that, to the extent any amounts are excluded from Consolidated Net Income by virtue of the proviso to the definition thereof contained herein, any add backs to Consolidated Net Income in determining Consolidated EBITDA as provided above shall be limited (or denied) in a fashion consistent with the proviso to the definition of Consolidated Net Income contained herein.

Consolidated Indebtedness shall mean, at any time, the sum of (without duplication) (a) all Indebtedness of the Borrower and its Restricted Subsidiaries (on a consolidated basis) as would be required to be reflected as debt or Capitalized Lease Obligations on the liability side of a consolidated

balance sheet of the Borrower and its Restricted Subsidiaries in accordance with GAAP, (b) all Indebtedness of the Borrower and its Restricted Subsidiaries of the type described in clauses (b) and (g) of the definition of Indebtedness and (c) all Contingent Obligations of the Borrower and its Restricted Subsidiaries in respect of Indebtedness of any third Person of the type referred to in preceding clauses (a) and (b).

Consolidated Net Income shall mean, for any period, the net income (or loss) of the Borrower and its Restricted Subsidiaries determined on a consolidated basis for such period (taken as a single accounting period) in accordance with GAAP, provided that the following items shall be excluded in computing Consolidated Net Income (without duplication): (i) the net income (or loss) of any Person in which a Person or Persons other than the Borrower and its Wholly-Owned Restricted Subsidiaries has an Equity Interest or Equity Interests to the extent of such Equity Interests held by Persons other than the Borrower and its Wholly-Owned Restricted Subsidiaries in such Person, (ii) except for determinations expressly required to be made on a Pro Forma Basis, the net income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary or all or substantially all of the property or assets of such Person are acquired by a Restricted Subsidiary and (iii) the net income of any Restricted Subsidiary to the extent that the declaration or payment of cash dividends or similar cash distributions by such Restricted Subsidiary of such net income is not at the time permitted by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Restricted Subsidiary.

Contingent Obligation shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (primary obligations) of any other Person (the primary obligor) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

Credit Documents shall mean this Agreement, the Second Lien Guaranty and Collateral Agreement and, after the execution and delivery thereof pursuant to the terms of this Agreement, each Note, each Joinder Agreement, each Mortgage, each other Security Document and each Incremental Loan Commitment Agreement.

Credit Party shall mean the Borrower and each Subsidiary Guarantor.

Cumulative Available CNI Amount shall mean, as of the Closing Date, \$0; provided that on the date of delivery of financial statements pursuant to Section 7.01(a) or (b), as the case may be, there shall be (a) if Consolidated Net Income for the fiscal quarter most recently ended is positive, added to the then Cumulative Available CNI Amount an amount equal to 50% of Consolidated Net Income for such fiscal quarter, and (b) if Consolidated Net Income for the fiscal quarter most recently ended is negative, deducted from the then Cumulative Available CNI Amount an amount equal to 100% of Consolidated Net Income for such fiscal quarter.

Default shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

Discharge Conditions shall have the same meaning as Discharge of First-Lien Credit Agreement Obligations in the Intercreditor Agreement.

Disqualified Stock shall mean, with respect to any Person, any Equity Interest that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, in either case at the option of the holder thereof) or upon the happening of an event, (a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (b) is or may become redeemable or repurchaseable at the option of the holder thereof, in whole or in part, or (c) is convertible or exchangeable at the option of the holder thereof for Indebtedness or Disqualified Stock, on or prior to, in the case of clause (a), (b) or (c), the 181st day after the Maturity Date; provided that any Equity Interest that would not constitute Disqualified Stock but for provisions thereof giving holders the right to require the issuer thereof to repurchase or redeem such Equity Interest upon the occurrence of a Change of Control occurring prior to the 181st day after the Maturity Date shall not constitute Disqualified Stock if the Change of Control provisions applicable to such Disqualified Stock are no more favorable to the holders of such Disqualified Stock than the provisions of this Agreement with respect to a Change of Control and such Disqualified Stock specifically provides that the issuer thereof will not repurchase or redeem any such Equity Interest pursuant to such provisions prior to the Borrower completing a Change of Control Offer.

Documents shall mean, collectively, (a) the Credit Documents and (b) the Warrant.

Dollars and the sign \$ shall each mean freely transferable lawful money of the United States.

Domestic Subsidiary of any Person shall mean any Subsidiary of such Person incorporated or organized in the United States or any State thereof or the District or Columbia.

Eligible Transferee shall mean and include a commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other accredited investor (as defined in Regulation D of the Securities Act), and, in any event, shall include any Affiliate of the Permitted Holder other than the Borrower and its Subsidiaries.

Employee Benefit Plans shall have the meaning provided in Section 5.05.

Employment Agreements shall have the meaning provided in Section 5.05.

Environmental Claims shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, notices of noncompliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law (hereafter, Claims), including, without limitation, (a) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief in connection with alleged injury or threat of injury to health, safety or the environment due to the presence of Hazardous Materials.

Environmental Law shall mean any Federal, state, foreign or local statute, law, rule, regulation, ordinance, code, guideline, policy and rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, employee health and safety or Hazardous Materials, including, without limitation, CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

Equity Interests of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interest in (however designated) equity of such Person, including any common stock, preferred stock, any limited or general partnership interest and any limited liability company membership interest, but excluding any debt security convertible or exchangeable into any such interest prior to conversion or exchange.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

ERISA Affiliate shall mean each person (as defined in Section 3(9) of ERISA) which together with the Borrower and/or any of their Subsidiaries would be deemed to be a single employer (a) within the meaning of Section 414(b), (c), (m) or (o) of the Code or (b) as a result of the Borrower and/or any Subsidiary of the Borrower being or having been a general partner of such person.

Event of Default shall have the meaning provided in Section 9.

Excess Cash Flow shall mean, for any Excess Cash Payment Period, to the extent remaining after any mandatory prepayments pursuant to Section 4.02 of the First-Lien Credit Agreement, the remainder of (a) the sum of, without duplication, (i) Adjusted Consolidated Net Income for such period and (ii) the decrease, if any, in Adjusted Consolidated Working Capital from the first day to the last day of such period, minus (b) the sum of, without duplication, (i) the aggregate amount of all Capital Expenditures made by the Borrower and its Restricted Subsidiaries during such Excess Cash Payment Period (other than Capital Expenditures to the extent financed with equity proceeds, Equity Interests, asset sale proceeds, insurance proceeds or Indebtedness), (ii) the aggregate amount of permanent principal payments of Indebtedness (in the case of any revolving Indebtedness that are accompanied by a permanent reduction in commitment) for borrowed money of the Borrower and its Restricted Subsidiaries and the permanent repayment of the principal component of Capitalized Lease Obligations of the Borrower and its Restricted Subsidiaries during such period (other than (1) repayments made with the proceeds of asset sales, sales or issuances of Equity Interests, insurance or Indebtedness and (2) payments of Loans and/or other Obligations, provided that repayments of Loans shall be deducted in determining

Excess Cash Flow only to the extent such repayments were made as a voluntary prepayment pursuant to Section 4.01 with Internally Generated Funds, (iii) the increase, if any, in Adjusted Consolidated Working Capital from the first day to the last day of such period, and (iv) the aggregate consideration paid in cash by the Borrower or any of its Restricted Subsidiaries in respect of acquisitions during such period (other than acquisitions to the extent financed with equity proceeds, Equity Interests, asset sale proceeds, insurance proceeds or Indebtedness).

Excess Cash Payment Date shall mean the date occurring 90 days after the last day of each fiscal year of the Borrower (commencing with the fiscal year of the Borrower ending December 31, 2010).

Excess Cash Payment Period shall mean (i) with respect to the repayment required on the first Excess Cash Payment Date, the period from the first day of the first fiscal quarter of the Borrower beginning on or after the Closing Date to the last day of the Borrower's fiscal year ending December 31, 2010 (taken as one accounting period), and (ii) with respect to the repayment required on each successive Excess Cash Payment Date, the immediately preceding fiscal year of the Borrower.

Exchange Act shall mean the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder.

Excluded Taxes shall have the meaning provided in Section 4.04(a).

Existing Indebtedness Agreements shall have the meaning provided in Section 5.05.

Fair Market Value shall mean, with respect to any asset (including any Equity Interests of any Person), the price at which a willing buyer, not an Affiliate of the seller, and a willing seller who does not have to sell, would agree to purchase and sell such asset, as determined in good faith by the board of directors or other governing body or, pursuant to a specific delegation of authority by such board of directors or governing body, a designated senior executive officer, of the Borrower, or the Restricted Subsidiary of the Borrower selling such asset.

Fees shall mean all amounts payable pursuant to or referred to in Section 3.01.

FEMA shall mean the Federal Emergency Management Agency.

First-Lien Collateral Agent shall have the meaning assigned to such term in the Intercreditor Agreement.

First-Lien Credit Agreement shall have the meaning assigned to such term in the Intercreditor Agreement.

First-Lien Credit Documents shall have the meaning assigned to such term in the Intercreditor Agreement.

First-Lien Creditors shall have the meaning assigned to such term in the Intercreditor Agreement.

First-Lien Lenders shall have the meaning assigned to such term in the Intercreditor Agreement.

First-Lien Obligations shall have the meaning assigned to such term in the Intercreditor Agreement.

Foreign Pension Plan shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

Foreign Subsidiary shall mean, as to any Person, any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

GAAP shall mean generally accepted accounting principles in the United States as in effect from time to time; provided that determinations in accordance with GAAP for purposes of Section 8, including defined terms as used therein, and for all purposes of determining any financial ratios or terms, are subject (to the extent provided therein) to Section 11.07(a).

Governmental Authority shall mean the government of the United States, any other nation or any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

Guaranty and Collateral Agreement shall have the meaning set forth in Section 5.09.

Hazardous Materials shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of hazardous substances, hazardous waste, hazardous materials, extremely hazardous substances, restricted hazardous waste, toxic substances, toxic pollutants, contaminants, or pollutants, or words of similar import under any applicable Environmental Law; and (c) any other chemical, material or substance, the exposure to, or Release of which is prohibited, limited or regulated by any Governmental Authority.

Incremental Loan shall have the meaning provided in Section 2.01(c).

Incremental Loan Borrowing Date shall mean, with respect to each Tranche of Incremental Loans, each date on which the Borrower incurs Incremental Loans of such Tranche pursuant to Section 2.01(c), which date shall be the date of the effectiveness of the Incremental Loan Commitment Agreement pursuant to which such Incremental Loans are to be made.

Incremental Loan Commitment shall mean, with respect to each Incremental Loan Lender, the commitment of such Lender to make Incremental Loans pursuant to Section 2.01(c) on a given Incremental Loan Borrowing Date, as such commitment is set forth in the respective Incremental Loan Commitment Agreement delivered pursuant to Section 2.14(b) and as same may be terminated pursuant to Section 3.02 or 9, as applicable

Incremental Loan Commitment Agreement shall have the meaning provided in Section 2.14(b).

Incremental Loan Lender shall have the meaning provided in Section 2.14(b).

Incremental Loan Maturity Date shall mean, for any Tranche of Incremental Loans, the final maturity date set forth for such Incremental Loans in the applicable Incremental Loan Commitment Agreement; provided that the final maturity date for all Incremental Loans of a given Tranche shall be the same date and in no event shall such final maturity date be prior to the Initial Loan Maturity Date.

Indebtedness shall mean, as to any Person, without duplication, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services, (b) the maximum amount available to be drawn or paid under all letters of credit, bankers' acceptances, bank guaranties, surety and appeal bonds and similar obligations issued for the account of such Person and all unpaid drawings and unreimbursed payments in respect of such letters of credit, bankers' acceptances, bank guaranties, surety and appeal bonds and similar obligations, (c) all indebtedness of the types described in clause (a), (b), (d), (e), or (g) of this definition secured by any Lien on any property owned by such Person, whether or not such indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such indebtedness, such indebtedness shall be deemed to be in an amount equal to the lesser of the (i) Fair Market Value of the property to which such Lien relates or (ii) the principal amount of such indebtedness, (d) all Capitalized Lease Obligations of such Person, (e) all obligations under any Interest Rate Protection Agreement, any Other Hedging Agreement or under any similar type of agreement that would appear as a liability on the balance sheet of such Person under GAAP, (f) all Contingent Obligations of such Person (excluding Contingent Obligations incurred in the ordinary course of business), and (g) the amount of all obligations of such Person in respect of Disqualified Stock or, with respect to any Restricted Subsidiary of such Person, any Preferred Equity (measured, in each case, at the greatest required maximum fixed repurchase price on the date of determination and any dividends declared at such date, but not yet paid). The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is directly liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, Indebtedness shall not include trade payables which are past due for less than 90 days, deferred balances of obligations to trade creditors, Off-Balance Sheet Liabilities, accrued expenses and deferred tax and other credits, in each case, incurred by any Person in the ordinary course of business of such Person.

Independent Financial Advisor shall mean an accounting, appraisal or investment banking firm of national standing or any third party appraiser or recognized expert with experience in appraising the terms and conditions of the type of transaction or series of related transactions for which an opinion is required, provided that such firm or appraiser is not an Affiliate of the Borrower.

Initial Loan shall mean a Closing Date Loan.

Initial Loan Commitment shall mean, for each Lender, the amount set forth opposite such Lender's name in Schedules 1.01(a) and 1.01(b), directly below the column entitled "Closing Date Loan Commitments", as the same may be terminated pursuant to Sections 3.02 or 9, as applicable.

Initial Loan Maturity Date shall mean October 1, 2013.

Intellectual Property shall mean and include all of the following:

(a) copyrights, including any United States or foreign copyright now or hereafter owned by the Borrower or any of its Restricted Subsidiaries, including any registrations of any copyrights in the United States Copyright Office or any foreign equivalent office, as well as any application for a copyright registration now or hereafter made with the United States Copyright Office or any foreign equivalent office by the Borrower or any of its Restricted Subsidiaries;

(b) domain names, including all internet domain names and associated URL addresses in or to which the Borrower or any of its Restricted Subsidiaries now or hereafter have any right, title or interest;

(c) trademarks and service marks and all goodwill connected with the use thereof and symbolized thereby, including all right, title and interest in and to any trademarks, service marks and trade names now held or hereafter acquired by the Borrower or any of its Restricted Subsidiaries, including any registration or application for registration of any trademarks and service marks now held or hereafter acquired by the Borrower or any of its Restricted Subsidiaries, which are registered or filed in the United States Patent and Trademark Office or the equivalent thereof in any state of the United States or any equivalent foreign office or agency, as well as any unregistered trademarks and service marks used by the Borrower or any of its Restricted Subsidiaries and any trade dress including logos, designs, fictitious business names and other business identifiers used by the Borrower or any of its Restricted Subsidiaries;

(d) patents, including any patent in or to which the Borrower or any of its Restricted Subsidiaries now or hereafter have any right, title or interest therein, and any divisions, continuations (including, but not limited to, continuations-in-parts) and improvements thereof, as well as any application for a patent now or hereafter made by the Borrower or any of its Restricted Subsidiaries; and

(e) trade secrets, including any secretly held proprietary existing engineering or other data, information, production procedures and other secretly held proprietary know-how relating to the design manufacture, assembly, installation, use, operation, marketing, sale and/or servicing of any products or business of the Borrower or any of its Restricted Subsidiaries worldwide whether written or not.

Intercreditor Agreement shall mean the Intercreditor Agreement dated as of December 17, 2009 between the Collateral Agent and the First-Lien Collateral Agent.

Interest Payment Date shall have the meaning provided in Section 2.08(d).

Interest Rate Protection Agreement shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement or other similar agreement or arrangement.

Internally Generated Funds shall mean funds generated from the operations of the Borrower and its Subsidiaries (excluding, without limitation, proceeds from the issuance of any Equity Interests or the incurrence of any Indebtedness).

Investment by any Person shall mean any loan, advance or other extension of credit (other than advances or extensions of credit and receivables in the ordinary course of business that are recorded as accounts receivable on the balance sheet of such Person or acquired as part of the assets acquired in connection with an acquisition of assets otherwise permitted by this Agreement and also

excluding advances to officers and employees in the ordinary course of business) or capital contribution (by means of transfers of cash or other property to others) or payments for property or services for the account or use of others to, or incurrence of a Contingent Obligation of any obligation of, or purchase or acquisition of Equity Interests, bonds, notes, debentures or other securities or evidence of Indebtedness issued by, any other Person. For the purposes of Sections 7.15 and 8.03 and the definition of Restricted Payments, Investment shall include the Fair Market Value of the Investment of the Borrower or a Restricted Subsidiary in any Subsidiary of the Borrower at the time that any such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, the Borrower or such Restricted Subsidiary, as the case may be, shall be deemed to continue to have a permanent Investment in an Unrestricted Subsidiary (proportionate to its equity interest in such Subsidiary) of an amount (if positive) equal to:

(a) its Investment in such Subsidiary at the time of such redesignation, less

(b) the portion (proportionate to its equity interest in such Subsidiary) of the Fair Market Value of its Investment in such Subsidiary at the time of such redesignation.

In determining the amount of any Investment made by transfer of any property other than cash, such property shall be valued at its Fair Market Value at the time of such Investment.

Joinder Agreement shall mean a Joinder Agreement substantially in the form of Exhibit I to the Guaranty and Collateral Agreement (appropriately completed).

Junior Financing Documentation shall mean the documentation governing any Subordinated Obligations.

Leaseholds of any Person shall mean all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

Lender shall mean each financial institution or entity listed on Schedules 1.01(a) and 1.01(b), as well as any Person that becomes a Lender hereunder pursuant to Sections 2.13, 2.14 or 11.04(b).

Lien shall mean any mortgage, pledge, hypothecation, assignment for security, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC or any other similar recording or notice statute, and any lease having substantially the same effect as any of the foregoing).

Loan shall mean each Initial Loan and each Incremental Loan.

Management Agreements shall have the meaning provided in Section 5.05.

Margin Stock shall have the meaning provided in Regulation U of the Board (as from time to time in effect and any successor to all or a portion thereof).

Material Adverse Effect shall mean (a) a material adverse effect on the business, operations, property, assets, liabilities, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries, taken as a whole, or (b) a material adverse effect (i) on the rights or remedies of the

Lenders, the Administrative Agent or the Collateral Agent hereunder or under any other Credit Document, or (ii) on the ability of the Credit Parties taken as a whole to perform their obligations to the Lenders, the Administrative Agent or the Collateral Agent hereunder or under any other Credit Document, provided, that, it is agreed and understood that the net economic effect of any event or circumstance shall be taken into account in determining whether or not a Material Adverse Effect has occurred.

Material Asset Sale shall mean any Asset Sale (for this purpose, determined as if sub-clauses (ii), (iii) and (vi) of clause (c) of the definition of Asset Sale did not exist) or series of related such Assets Sales (i.e., separate assets being sold, transferred or otherwise disposed of as part of an identifiable group of assets and within a reasonably limited time period) where the aggregate consideration therefor (or Fair Market Value of the assets transferred or disposed of, if other than an arms length sale) is equal to, or in excess of, \$1,000,000 individually and \$2,500,000 in the aggregate in any fiscal year of the Borrower.

Material Contracts shall mean any and all oral or written supply agreements, requirements contracts, customer agreements, franchise agreements, license agreements, distribution agreements, joint venture agreements, asset purchase agreements, stock purchase agreements, merger agreements, agency or advertising agreements, leases of real or personal property, credit agreements, loan agreements, security agreements, pledge agreements, mortgages, trust deeds, trust indentures, stock purchaser agreements, consulting agreements, management agreements, employment agreements, severance agreements, collective bargaining agreements, employee benefit plans or arrangements, tax sharing agreements, indemnification agreements (including, without limitation, as may be entered into with suppliers) or other contracts, agreements, arrangements, understandings and commitments to which any Credit Party is a party which if terminated is reasonably likely to cause a Material Adverse Effect.

Maturity Date shall mean, with respect to the relevant Tranche of Loans, the Initial Loan Maturity Date or the Incremental Loan Maturity Date, as the case may be.

Measurement Period shall mean each period of four consecutive fiscal quarters of the Borrower, in each case taken as one accounting period.

Mercedes Agreement shall mean the Telematics Services Agreement, dated on or around October 31, 2007, by and between the Borrower and Mercedes Benz USA, LLC, as the same may be amended, modified, extended or supplemented in accordance with the terms thereof and hereof.

Minimum Borrowing Amount shall mean \$1,000,000.

Moody's shall mean Moody's Investors Service, Inc.

Mortgage shall mean a mortgage, leasehold mortgage, deed of trust, leasehold deed of trust, deed to secure debt, leasehold deed to secure debt or similar security instrument.

Mortgage Policy shall mean a Lender's title insurance policy (Form 1992).

Mortgaged Property shall mean any Real Property owned or leased by the Borrower or any of its Subsidiaries which is encumbered (or required to be encumbered) by a Mortgage pursuant to the terms of this Agreement or any Security Document, as required by the Collateral and Guarantee Requirement and Section 7.12.

Multiemployer Plan shall mean any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is an obligation to contribute of) the Borrower, any of its Subsidiaries and/or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on which the Borrower, any of its Subsidiaries and/or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

NAIC shall mean the National Association of Insurance Commissioners.

Net Cash Proceeds shall mean, to the extent remaining after any mandatory prepayments pursuant to Section 4.02 of the First-Lien Credit Agreement, for any event requiring a mandatory repayment pursuant to Sections 4.02(c) or (d), the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such event, net of reasonable transaction costs (including, as applicable, any underwriting, brokerage or other customary commissions and reasonable legal, advisory and other fees and expenses associated therewith) incurred in connection with any such event and net of taxes paid or payable as a result thereof.

Net Insurance Proceeds shall mean, to the extent remaining after any mandatory prepayments pursuant to Section 4.02 of the First-Lien Credit Agreement, with respect to any Recovery Event, the cash proceeds received by the respective Person in connection with such Recovery Event (net of (a) reasonable costs and taxes incurred in connection with such Recovery Event and (b) required payments of any Indebtedness (other than Indebtedness secured pursuant to the Security Documents) which is secured by the respective assets the subject of such Recovery Event).

Net Sale Proceeds shall mean, to the extent remaining after any mandatory prepayments pursuant to Section 4.02 of the First-Lien Credit Agreement, for any sale or other disposition of assets, the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such sale or other disposition of assets, net of (a) actual transaction costs (including, without limitation, any underwriting, brokerage or other customary selling commissions, reasonable legal, advisory and other fees and expenses (including title and recording expenses), associated therewith and sales, VAT and other taxes arising therefrom), (b) payments of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within 30 days after, the date of such sale or other disposition, (c) the amount of such gross cash proceeds required to be used to permanently repay any Indebtedness (other than Indebtedness secured pursuant to the Security Documents), which is secured by the respective assets which were sold or otherwise disposed of, and (d) the estimated net marginal increase in income, franchise or similar taxes which will be payable by the Borrower or any Restricted Subsidiary with respect to the fiscal year of the Borrower in which the sale or other disposition occurs as a result of such sale or other disposition (or, without duplication, which will be payable by the Borrower or any Restricted Subsidiary in the fiscal year of the Borrower in which cash proceeds in respect of such sale or other disposition are received by way of deferred payment pursuant to a promissory note, receivable or otherwise); provided, however, that such gross proceeds shall not include any portion of such gross cash proceeds which the Borrower determines in good faith should be reserved for post-closing adjustments (to the extent the Borrower delivers to the Lenders a certificate signed by an Authorized Officer as to such determination), it being understood and agreed that on the day that all such post-closing adjustments have been determined (which shall not be later than six months following the date of the respective asset sale), the amount (if any) by which the reserved amount in respect of such sale or disposition exceeds the actual post-closing adjustments payable by the Borrower or any of its Restricted Subsidiaries shall constitute Net Sale Proceeds on such date received by the Borrower and/or any of its Restricted Subsidiaries from such sale or other disposition.

Non-Recourse Indebtedness shall mean Indebtedness:

(a) as to which none of the Borrower or any Restricted Subsidiary provides any guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Indebtedness) or is directly or indirectly liable (as a guarantor or otherwise) or as to which there is any recourse to the assets of the Borrower or any Restricted Subsidiary; and

(b) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Borrower or any Restricted Subsidiary to declare a default under such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity.

Note shall have the meaning provided in Section 2.05(a).

Notice of Borrowing shall mean a notice of borrowing substantially in the form of Exhibit A.

Notice of Conversion/Continuation shall have the meaning provided in Section 2.06.

Notice Office shall mean for notices, the office of the Administrative Agent described below (or such other office or person as the Administrative Agent may hereafter designate in writing as such to the other parties hereto):

Plase HT, LLC
c/o Apollo Management, L.P.
1 Manhattanville Road - Suite 201
Purchase, NY 10577
Attn: Bob Pasteelnick
Email: bpasteelnick@apollopl.com
Phone: (914) 467-6403
Fax: (914) 206-4607
Attn: Tom Doria
Email: tdoria@apollopl.com
Phone: (914) 467-6425
Fax: (914) 206-4485
Alt. Fax: (914) 644-3110

Obligations shall mean all amounts owing to the Administrative Agent, the Collateral Agent or any Lender pursuant to the terms of this Agreement or any other Credit Document, including, without limitation, all amounts in respect of any principal, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in this Agreement, whether or not such interest is an allowed claim under any such proceeding or under applicable state, federal or foreign law), penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities, and guarantees of the foregoing amounts.

OEM Agreement shall mean a telematics services agreement with a major car manufacturer, as the same may be amended, modified, extended or supplemented in accordance with the terms thereof and hereof, including, but not limited to the Mercedes Agreement.

Off-Balance Sheet Liabilities of any Person shall mean (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any liability of such Person under any sale and leaseback transactions that does not create a liability on the balance sheet of such Person, (c) any obligation under a Synthetic Lease or (d) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

Officer's Certificate shall mean a certificate signed by an Authorized Officer of the specified Person and delivered to the Administrative Agent.

Opinion of Counsel shall mean a written opinion from legal counsel who is reasonably acceptable to the Administrative Agent. The counsel may be an employee of or counsel to the Borrower or the Administrative Agent, as the context permits.

Other Hedging Agreements shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements, or arrangements designed to protect against fluctuations in currency values or commodity prices.

Outstanding shall mean, when used with reference to Voting Securities, at any date as of which the number of shares thereof is to be determined, all issued shares of Voting Securities, except shares then owned or held by or for the account of the Borrower or any Subsidiary of the Borrower, and shall include all shares issuable in respect of outstanding certificates representing fractional interests in shares of Voting Securities.

Patriot Act shall have the meaning provided in Section 11.18.

Payment Office shall mean the office designated in writing by the Administrative Agent as such to the other parties hereto.

PBGC shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

Permitted Acquisition shall mean a transaction described in sub-clause (a) of the definition of Permitted Investment .

Permitted Encumbrance shall mean, with respect to any Mortgaged Property, (i) the Liens in favor of the First-Lien Collateral Agent (or such other trustee as may be required or desired under local law) for the benefit of the First-Lien Creditors and (ii) such exceptions to title as are set forth in the Mortgage Policy delivered with respect thereto, all of which exceptions must be acceptable to the Administrative Agent in its reasonable discretion.

Permitted Holder shall mean Apollo Management L.P. and its Affiliates.

Permitted Investment shall mean any Investment by the Borrower or a Restricted Subsidiary in:

(a) any Restricted Subsidiary or any Person that will, upon the making of such Investment, become a Restricted Subsidiary, or that is merged or consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary; provided that the primary business of such Restricted Subsidiary is a Related Business, and subject to compliance with Section 7.12;

(b) cash or Cash Equivalents;

(c) receivables owing to the Borrower or a Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Borrower or such Restricted Subsidiary deems reasonable under the circumstances;

(d) payroll, travel, commission and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(e) loans and advances to employees, directors and consultants made in the ordinary course of business; provided that such loans and advances do not exceed \$1,000,000 at any one time outstanding;

(f) stock, obligations or other securities received in settlement or good faith compromise of debts owing to the Borrower or a Restricted Subsidiary or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of a debtor;

(g) any Person to the extent such Investment represents non-cash consideration received in connection with an asset sale, including an Asset Sale consummated in compliance with Section 8.02;

(h) Interest Rate Protection Agreements and Other Hedging Agreements, in each case permitted under Section 8.04;

(i) any Investment in existence or the subject of a written commitment in existence on the Closing Date and set forth on Schedule 8.03 and any Investment that replaces, refinances or refunds such an Investment, provided that the new Investment is in an amount that does not exceed that amount replaced, refinanced or refunded and is made in the same Person as the Investment replaced, refinanced or refunded;

(j) prepaid expenses, negotiable instruments held for deposit or collection and lease, utility and worker's compensation, performance and other similar deposits provided to third parties in the ordinary course of business;

(k) Investments in any Person to the extent the consideration provided by the Borrower consists solely of Equity Interests of the Borrower (other than Disqualified Stock);

(l) any Person where such Investment was acquired by the Borrower or any Restricted Subsidiary (1) in exchange for any other Investment or accounts receivable held by the Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or

recapitalization of the issuer of such other Investment or accounts receivable or (2) as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investment or such other transfer of title with respect to any secured Investment in default;

(m) negotiable instruments held for deposit or collection in the ordinary course of business;

(n) guarantees by the Borrower or a Restricted Subsidiary of Indebtedness otherwise permitted to be incurred by the Borrower or a Restricted Subsidiary under this Agreement and the creation of Liens on the assets of the Borrower or a Restricted Subsidiary in compliance with Section 8.01; and

(o) any transaction to the extent it constitutes an Investment that is permitted by Section 8.06(b) (other than clause (ii) thereof); and

(p) other Investments made for Fair Market Value that do not exceed \$10,000,000 in the aggregate outstanding at any one time.

Permitted Liens shall have the meaning provided in Section 8.01.

Permitted Refinancing Indebtedness shall mean any Indebtedness that refinances any other Indebtedness that is incurred in accordance with Section 8.04(a) or that is (or was previously) incurred under Sections 8.04(b)(ii), (iv), (xiii) or (xv) or (xvii), including any successive refinancings, so long as:

(a) such Indebtedness is in an aggregate principal amount (or if incurred with issue discount, an aggregate issue price) not in excess of the sum of:

(i) the aggregate principal amount (or is incurred with original issue discount, the aggregate accreted value) and any accrued but unpaid interest then outstanding of the Indebtedness being refinanced; and

(ii) an amount necessary to pay any fees and expenses, including premiums, tender and defeasance costs, related to such refinancing,

(b) in the case of the refinancing of term Indebtedness, the Average Life of such Indebtedness is equal to or greater than the Average Life of the Indebtedness being refinanced,

(c) in the case of the refinancing of term Indebtedness, the final stated maturity of the Indebtedness being incurred is no earlier than the final stated maturity of the Indebtedness being refinanced, and

(d) in the case of the refinancing of Indebtedness of the Borrower or a Subsidiary Guarantor:

(i) the new Indebtedness shall not be senior in right of payment to the Indebtedness being refinanced; and

(ii) if the Indebtedness being refinanced constitutes Subordinated Obligations of the Borrower or a Subsidiary Guarantor, the new Indebtedness shall be subordinated to the Obligations, as applicable, at least to the same extent as the Subordinated Obligations; provided, however, that Permitted Refinancing Indebtedness shall not include:

(x) Indebtedness of a Restricted Subsidiary (other than a Subsidiary Guarantor) that refinances Indebtedness of the Borrower or a Subsidiary Guarantor; or

(y) Indebtedness of the Borrower or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary.

Person shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any Governmental Authority.

PIK Interest Rate shall mean 9% per annum.

Plan shall mean any pension plan as defined in Section 3(2) of ERISA, other than a Multiemployer Plan, which is maintained or contributed to by (or to which there is an obligation to contribute of) the Borrower, any of its Subsidiaries or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on which the Borrower, any of its Subsidiaries or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

Preferred Equity, as applied to the Equity Interests of any Person, shall mean Equity Interests of such Person (other than common Equity Interests of such Person) of any class or classes (however designed) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of Equity Interests of any other class of such Person.

Pro Forma Basis shall mean, in connection with any calculation of Consolidated EBITDA for any period of four consecutive fiscal quarters, giving effect on a pro forma basis to any of the following events which occurred after the first day of the respective such fiscal quarter and on or prior to the date of determination of Consolidated EBITDA on a pro forma basis, as if same had occurred on the first day of the respective period of four consecutive fiscal quarters (and taking into account, in the case of Asset Acquisitions, factually supportable and identifiable cost savings and expenses which would otherwise be accounted for as an adjustment pursuant to Article 11 of Regulation S-X under the Securities Act, as if such cost savings or expenses were realized on the first day of the respective period):

(i) if any Person has had its designation changed from Restricted Subsidiary to Unrestricted Subsidiary, or from Unrestricted Subsidiary to Restricted Subsidiary, after the first day of such period of four consecutive fiscal quarters and to prior to the date of the respective determination, such Person shall be deemed to have been a Restricted Subsidiary or Unrestricted Subsidiary (i.e., whichever designation applies on the date of determination), as the case may be, for the entire such period of four consecutive fiscal quarters;

(ii) any Asset Acquisition effected after the first day of the respective such four consecutive fiscal quarter period; and

(iii) any Asset Sale occurring after the first day of such period of four consecutive fiscal quarter period.

Public Lender shall have the meaning provided in Section 11.03(b).

Quarterly Payment Date shall mean the last Business Day of each March, June, September and December occurring after the Closing Date.

Real Property of any Person shall mean all the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

Recovery Event shall mean the receipt by the Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation awards payable (a) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets of the Borrower or any of its Subsidiaries or (b) under any policy of insurance maintained by any of them.

Register shall have the meaning provided in Section 11.15.

Regulation D shall mean Regulation D of the Board as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

Regulation U shall mean Regulation U of the Board as from time to time in effect and any successor to all or a portion thereof.

Related Business shall mean any business that is the same as or related, ancillary, incidental or complementary to the business of the Borrower or a Restricted Subsidiary on the Closing Date or any reasonable extension, development or expansion of the business.

Release shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, into or upon any land or water or air, or otherwise entering into the environment.

Relevant Reinvestment Period shall mean, with respect to any Asset Sale or Recovery Event, the earlier of the dates referred to in clauses (a) and (b) below occurring after the receipt of Net Sale Proceeds or Net Insurance Proceeds by the Borrower or any of its Subsidiaries, as the case may be, from such Asset Sale or Recovery Event: (a) nine months following the receipt of such Net Sale Proceeds or Net Insurance Proceeds, as the case may be, and (b) the date upon which the Borrower or the relevant Subsidiary determines not to reinvest the Net Sale Proceeds or Net Insurance Proceeds, as the case may be, from the respective Asset Sale or Recovery Event, as the case may be.

Replaced Lender shall have the meaning provided in Section 2.13.

Replacement Assets shall mean property and assets that are acquired by the Borrower or a Restricted Subsidiary utilizing proceeds realized from or otherwise in connection with an Asset Sale.

Replacement Lender shall have the meaning provided in Section 2.13.

Reportable Event shall mean an event described in Section 4043(c) of ERISA with respect to a Plan that is subject to Title IV of ERISA other than those events as to which the 30-day notice period is waived under subsection .22, .23, .25, .27 or .28 of PBGC Regulation Section 4043.

Required Lenders shall mean, at any time, Lenders the sum of whose outstanding Loans at such time represents at least a majority of the sum of all outstanding Loans of all the Lenders.

Restricted Payment shall mean:

(a) any dividend or distribution (whether made in cash, securities or other property) declared or paid by the Borrower or any Restricted Subsidiary on or with respect to any Equity Interest of the Borrower or a Restricted Subsidiary, except for (i) any dividend or distribution that is made solely to the Borrower or a Restricted Subsidiary (and, if such Restricted Subsidiary is not a Wholly-Owned Subsidiary, to the other shareholders of such Restricted Subsidiary on a pro rata basis or on a basis that results in the receipt by the Borrower or a Restricted Subsidiary of dividends or distributions of greater value than it would receive on a pro rata basis) or (ii) any dividend or distribution to the extent payable in shares of Equity Interest (other than Disqualified Stock) of the Borrower or in options, warrants or other rights to acquire shares of Equity Interest (other than Disqualified Stock) of the Borrower;

(b) the purchase, repurchase, redemption, acquisition or retirement for value of any Equity Interest of the Borrower or a Restricted Subsidiary (other than from the Borrower or a Restricted Subsidiary or any entity that becomes a Restricted Subsidiary as a result of such transactions) or securities exchangeable for or convertible into any such Equity Interest, including the exercise of any option to exchange any Equity Interest (other than for or into Equity Interest of the Borrower or a Restricted Subsidiary that is not Disqualified Stock); provided that, notwithstanding anything in this definition to the contrary, the purchase, repurchase, redemption, acquisition or retirement for value of any Disqualified Stock of the Borrower or a Restricted Subsidiary at its scheduled mandatory redemption date shall only constitute a Restricted Payment to the extent (and only to the extent) that the issuance of such Disqualified Stock increased the amount available for Restricted Payments pursuant to Section 8.03(a)(iii);

(c) the purchase, repurchase, redemption, acquisition or retirement for value, prior to the date for any scheduled maturity, sinking fund or amortization or other installment payment, of any Subordinated Obligation (other than the purchase, repurchase or other acquisition of any Subordinated Obligation purchased in anticipation of satisfying a scheduled maturity, sinking fund or amortization or other installment obligation, in each case due within one year of the date of acquisition);

(d) any Investment (other than Permitted Investments and Indebtedness or Contingent Obligations of Restricted Subsidiaries with respect to Indebtedness permitted under Section 8.04) by the Borrower or any Restricted Subsidiary in any Person other than the Borrower or a Restricted Subsidiary; or

(e) the issuance, sale or other disposition of any Equity Interest of any Restricted Subsidiary to a Person (other than the Borrower or another Restricted Subsidiary) if the result thereof is that such Restricted Subsidiary shall cease to be a Subsidiary of the Borrower, in which event the amount of such Restricted Payment shall be the Fair Market Value of the remaining interest, if any, in such former Restricted Subsidiary held by the Borrower and the Restricted Subsidiaries.

Restricted Subsidiary shall mean each Subsidiary of the Borrower as of the Closing Date and thereafter unless such Subsidiary is designated an Unrestricted Subsidiary in accordance with the provisions of this Agreement.

Returns shall have the meaning provided in Section 6.09.

S&P shall mean Standard & Poor's Ratings Services, a division of McGraw-Hill, Inc.

SEC shall have the meaning provided in Section 7.01(h).

Section 4.04(b)(ii) Certificate shall have the meaning provided in Section 4.04(b)(ii).

Secured Creditors shall have the meaning assigned that term in the respective Security Documents.

Securities Act shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

Security Document shall mean and include each of the Guaranty and Collateral Agreement, each Mortgage, after the execution and delivery thereof, each Additional Security Document and any other related document, agreement or grant pursuant to which the Borrower or any of its Subsidiaries grants, perfects or continues a security interest in favor of the Collateral Agent for the benefit of the Secured Creditors.

Shareholders Agreements shall have the meaning provided in Section 5.05.

Subordinated Obligations shall mean any Indebtedness of the Borrower or any Subsidiary Guarantor (whether outstanding on the Closing Date or thereafter incurred) that is subordinate or junior in right of payment or priority of lien to the Obligations or the Liens securing the Obligations pursuant to a written agreement to that effect.

Subsidiary shall mean, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person or (b) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% equity interest at the time. Unless otherwise qualified, all references to a Subsidiary or to Subsidiaries in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower. Notwithstanding the foregoing (except for the purposes of Sections 6.01, 6.06, 6.09, 6.10, 6.15, 6.18, 7.01(i), 7.01(j), 7.05, 7.06, 7.07, 7.10, 9.05, 9.06, 9.09, and the definition of Unrestricted Subsidiary contained herein), an Unrestricted Subsidiary shall be deemed not to be a Subsidiary of the Borrower or any of its other Subsidiaries for purposes of this Agreement.

Subsidiary Guarantor shall mean each Domestic Subsidiary of the Borrower whether existing on the Closing Date or established, created or acquired after the Closing Date, that has executed and delivered the Guaranty and Collateral Agreement or has otherwise become a party thereto by means of the execution and delivery of a Joinder Agreement by such Domestic Subsidiary unless and until such time as the respective Domestic Subsidiary is released from all of its obligations under the Guaranty and Collateral Agreement in accordance with the terms and provisions thereof.

Subsidiaries Guaranty shall mean the guaranty provided by the Subsidiary Guarantors pursuant to Article II of the Guaranty and Collateral Agreement.

Successor Borrower shall have the meaning provided in Section 8.05(a)(i).

Successor Guarantor shall have the meaning provided in Section 8.05(b)(i).

Synthetic Lease shall mean a lease transaction under which the parties intend that (a) the lease will be treated as an operating lease by the lessee and (b) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

Tax Benefit shall have the meaning provided in Section 4.04(d).

Tax Sharing Agreements shall (i) have the meaning provided in Section 5.05 or (ii) mean a Tax Sharing Agreement in form and substance reasonably satisfactory to the Administrative Agent to be entered into by the Borrower and its Subsidiaries at the time of the first designation of an Unrestricted Subsidiary, as the same may be amended, modified and/or supplemented from time to time in accordance with the terms hereof and thereof.

Taxes shall have the meaning provided in Section 4.04(a).

Total Commitment shall mean, at any time, the sum of the Commitments of each of the Lenders at such time.

Total Incremental Loan Commitment of any Tranche of Incremental Loans shall mean, at any time, the sum of the Incremental Loan Commitments of such Tranche at such time.

Total Initial Loan Commitment shall mean, at any time, the sum of the Initial Loan Commitments of each Lender at such time.

Total Leverage Ratio shall mean, on any date of determination, the ratio of (a) Consolidated Indebtedness on such date to (b) Consolidated EBITDA for the Measurement Period most recently ended on or prior to such date for which financial statements are available; provided that such Consolidated EBITDA shall be determined on a Pro Forma Basis.

Tranche shall mean the respective facility and commitments utilized in making Loans hereunder, with there being one Tranche on the Closing Date, i.e., the Initial Loans. In addition, and notwithstanding the foregoing, any Incremental Loans extended after the Closing Date shall, except to the extent provided in Section 2.14(c), be made pursuant to one or more additional Tranches of Loans which shall be designated pursuant to the respective Incremental Loan Commitment Agreement in accordance with the relevant requirements specified in Section 2.14.

Transaction shall mean, collectively, (a) the execution, delivery and performance by each Credit Party of the Documents to which it is a party, the incurrence of Loans on the Closing Date and the use of proceeds thereof and the issuance of the Warrants on the Closing Date, and (b) the payment of all fees and expenses in connection with the foregoing.

UCC shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

Unfunded Current Liability of any Plan subject to Title IV of ERISA shall mean the amount, if any, by which the value of the accumulated plan benefits under such Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the Fair Market Value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

United States and U.S. shall each mean the United States of America.

Unrestricted Subsidiary shall mean:

(a) any Subsidiary of the Company that at the time of determination is designated as an Unrestricted Subsidiary as permitted or required pursuant to Section 7.15 and is not thereafter redesignated as a Restricted Subsidiary as permitted pursuant thereto; and

(b) any Subsidiary of an Unrestricted Subsidiary.

Voting Securities shall mean, with respect to any Person, the common stock and any other securities issued by such Person entitled to vote generally in the election of directors of such Person.

Warrants shall mean the warrants issued on the Closing Date to the Closing Date Lenders or (ii) on any Incremental Loan Borrowing Date, to the applicable Incremental Loan Lenders, in each case, substantially in the form of Exhibit J.

Warrant Stock shall mean (i) all Equity Interests issued or issuable by the Borrower upon the exercise of the Warrant, and (ii) any securities issued or issuable by the Borrower with respect to shares of Equity Interests referred to in the foregoing clause by way of a stock dividend or stock split or in connection with a combination or subdivision of shares, reclassification, merger, consolidation or other reorganization of the Borrower.

Wholly-Owned Restricted Subsidiary shall mean, as to any Person, any Restricted Subsidiary which is also a Wholly-Owned Subsidiary of such Person.

Wholly-Owned Subsidiary shall mean, as to any Person, (a) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (b) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person has a 100% equity interest at such time (other than, in the case of a Foreign Subsidiary of the Borrower with respect to the preceding clauses (a) and (b), directors' qualifying shares and/or other nominal amounts of shares required to be held by Persons other than the Borrower and its Subsidiaries under applicable law).

SECTION 2. Amount and Terms of Credit.

2.01. The Commitments. (a) Subject to and upon the terms and conditions set forth herein, each Lender with a Closing Date Loan Commitment severally agreed to make a term loan (each, a Closing Date Loan and, collectively, the Closing Date Loans) to the Borrower, which Closing Date Loans (i) were incurred pursuant to a single drawing on the Closing Date, (ii) were denominated in Dollars and (iii) were made by each such Lender in that aggregate principal amount which did not exceed the Closing Date Commitment of such Lender on the Closing Date. Once repaid, Closing Date Loans incurred hereunder may not be reborrowed. It is agreed and acknowledged that a Closing Date Loan in the aggregate principal amount of \$15,000,000 was made to the Borrower as of the Closing Date by the Closing Date Lenders in accordance with the terms of this Section 2.01(a).

(b) [Reserved]

(c) Subject to and upon the terms and conditions set forth herein, each Lender with an Incremental Loan Commitment for a given Tranche of Incremental Loans severally agrees to make a term loan or term loans (each, an Incremental Loan and, collectively, the Incremental Loans) to the Borrower, which Incremental Loans (i) shall be incurred pursuant to a single drawing of such Tranche on the respective Incremental Loan Borrowing Date, (ii) shall be denominated in Dollars and (iii) shall be made by each such Lender in that aggregate principal amount which does not exceed the Commitment of such Lender on the respective Incremental Loan Borrowing Date. Once repaid, Incremental Loans incurred hereunder may not be reborrowed.

2.02. [Reserved].

2.03. [Reserved].

2.04. Disbursement of Funds. No later than 1:00 P.M. (New York City time) on the Closing Date, each Lender will make available its pro rata portion (determined in accordance with Section 2.07) of the Loans requested to be made on such date. All such amounts will be made available in Dollars and in immediately available funds at the Payment Office, and the Administrative Agent will make available to the Borrower at the Payment Office the aggregate of the amounts so made available by the Lenders.

2.05. Notes. (a) The Borrower's obligation to pay the principal of, and interest on, the Loans made by each Lender shall be evidenced in the Register maintained by the Administrative Agent pursuant to Section 11.15 and shall, if requested by such Lender, also be evidenced by a promissory note duly executed and delivered by the Borrower substantially in the form of Exhibit B, with blanks appropriately completed in conformity herewith (each, a Note and, collectively, the Notes).

(b) Each Lender will note on its internal records the amount of each Loan made by it (as well as any increase thereto as a result of the accretion of PIK interest) and each payment in respect thereof and prior to any transfer of any of its Notes will endorse on the reverse side thereof the outstanding principal amount of Loans evidenced thereby. Failure to make any such notation or any error in such notation shall not affect the Borrower's obligations in respect of such Loans. Although under no obligation to do so, any Lender may, following an increase in the outstanding principal amount of its Loans as a result of the accretion of PIK interest, request for a replacement Note in an aggregate principal amount which reflects such increase or increases (although any failure of a Lender to request such replacement Note shall in no event affect the Borrower's obligation to pay the entire principal amount of the Loans of such Lender).

(c) Notwithstanding anything to the contrary contained above in this Section 2.05 or elsewhere in this Agreement, Notes shall only be delivered to Lenders which at any time specifically request the delivery of such Notes. No failure of any Lender to request, obtain, maintain or produce a Note evidencing its Loans to the Borrower shall affect, or in any manner impair, the obligations of the Borrower to pay the Loans (and all related Obligations) incurred by the Borrower which would otherwise be evidenced thereby in accordance with the requirements of this Agreement, and shall not in any way affect the security or guaranties therefor provided pursuant to any Credit Document. Any Lender which does not have a Note evidencing its outstanding Loans shall in no event be required to make the notations otherwise described in preceding clause (b). At any time when any Lender requests the delivery of a Note to evidence any of its Loans, the Borrower shall promptly execute and deliver to the respective Lender the requested Note in the appropriate amount or amounts to evidence such Loans.

2.06. [Reserved].

2.07. Pro Rata Borrowings. (a) All Closing Date Loans under this Agreement were incurred from the Lenders with a Closing Date Loan Commitment on the Closing Date pro rata on the basis of their Closing Date Loan Commitments at such time. All Incremental Loans shall be incurred from the relevant Incremental Loan Lenders on the relevant Incremental Loan Borrowing Dates pro rata on the basis of the relevant Incremental Loan Commitment at such time. It is understood that no Lender shall be responsible for any default by any other Lender of its obligation to make Loans hereunder and that each Lender shall be obligated to make the Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Loans hereunder.

(b) [Reserved]

2.08. Interest. (a) The Borrower agrees to pay interest in respect of the unpaid principal amount of each Loan from the date of Borrowing thereof until the maturity thereof (whether by acceleration or otherwise) at a fixed rate per annum equal to the PIK Interest Rate, which interest shall be payable quarterly in-kind (PIK interest). On each Interest Payment Date and the date any interest is demanded under Section 2.08(c) or otherwise hereunder, accrued interest shall be added to the principal amount of the Loans to which it relates on the relevant Interest Payment Date and (i) such accrued interest shall be deemed paid and (ii) the principal amount of the Loans as so increased shall be deemed Loans hereunder and under the other Credit Documents for all purposes, and shall thereafter accrue interest in accordance with the terms of this Agreement.

(b) [Reserved].

(c) Overdue principal and, to the extent permitted by law, overdue interest in respect of each Loan shall, in each case, bear interest at a rate per annum equal to the rate which is 2% in excess of the rate then borne by such Loans, and all other overdue amounts payable hereunder and under any other Credit Document shall bear interest at a rate per annum equal to the rate which is 2% in excess of the rate then borne by such Loans. Interest that accrues under this Section 2.08(c) shall be payable on demand in the manner provided in Section 2.08(a).

(d) Accrued (and theretofore unpaid) interest shall be payable, in respect of each Loan in the manner provided in Section 2.08(a), (x) quarterly in arrears on each Quarterly Payment Date, (y) on the date of any repayment or prepayment of Loans (on the amount repaid or prepaid), and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand (each such date, an Interest Payment Date).

2.09. [Reserved].

2.10. Increased Costs, Illegality, etc. (a) In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto at any time, that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any Loan because of any change since the Closing Date in any applicable law or governmental rule, regulation, order, guideline or request (whether or not having the force of law) or in the interpretation or administration thereof

and including the introduction of any new law or governmental rule, regulation, order, guideline or request, such as, but not limited to (1) a change in the basis of taxation of payment to any Lender of the principal of or interest on the Loans or any other amounts payable hereunder (except for (x) Taxes with respect to which additional amounts are paid pursuant to Section 4.04 or would be payable but for the failure to provide the forms required to be provided in Section 4.04(b) or (y) changes in the rate of tax on, or determined by reference to, the net income or net profits of such Lender pursuant to the laws of the jurisdiction in which it is organized or in which its principal office or applicable lending office is located or any subdivision thereof or therein) or (2) a change in official reserve requirements

then, and in any such event, such Lender shall promptly give notice (by telephone promptly confirmed in writing) to the Borrower and the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders). Thereafter, the Borrower agrees to pay to such Lender, upon such Lender's written request therefore, and in the case of such amounts constituting interest, in the manner provided in Section 2.08(a), such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as shall be required to compensate such Lender for such increased costs or reductions in amounts received or receivable hereunder (a written notice as to the additional amounts owed to such Lender, showing in reasonable detail the basis for the calculation thereof, submitted to the Borrower by such Lender shall, absent manifest error, be final and conclusive and binding on all the parties hereto).

(b) If any Lender determines that after the Closing Date the introduction of or any change in any applicable law or governmental rule, regulation, order, guideline, directive or request (whether or not having the force of law) concerning capital adequacy, or any change in interpretation or administration thereof by the NAIC or any Governmental Authority, central bank or comparable agency, will have the effect of increasing the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender based on the existence of such Lender's Commitment hereunder or its obligations hereunder (to the extent reimbursement of such amounts are not provided for in Section 4.04(a)) or would have been provided for but for the failure to provide the forms required to be provided in Section 4.04(b) and other than changes in the rate of tax on, or determined by reference to, the net income or net profits of such Lender pursuant to the laws of the jurisdiction in which it is organized or in which its principal office or applicable lending office is located or any subdivision thereof or therein, then the Borrower agrees to pay to such Lender, upon its written demand therefore, and in the case of such amounts constituting interest, in the manner provided in Section 2.08(a), such additional amounts as shall be required to compensate such Lender or such other corporation for the increased cost to such Lender or such other corporation or the reduction in the rate of return to such Lender or such other corporation as a result of such increase of capital. In determining such additional amounts, each Lender will act reasonably and in good faith and will use averaging and attribution methods which are reasonable; provided that such Lender's determination of compensation owing under this Section 2.10(b) shall, absent manifest error, be final and conclusive and binding on all the parties hereto. Each Lender, upon determining that any additional amounts will be payable pursuant to this Section 2.10(b), will give prompt written notice thereof to the Borrower, which notice shall show in reasonable detail the basis for calculation of such additional amounts.

2.11. [Reserved].

2.12. Change of Lending Office. Each Lender agrees that on the occurrence of any event giving rise to the operation of Section 2.10(a), Section 2.10(b) or Section 4.04(a) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event; provided that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of such Section. Nothing in this Section 2.12 shall affect or postpone any of the obligations of the Borrower or the right of any Lender provided in Sections 2.10 and 4.04(a).

2.13. Replacement of Lenders. (a) Upon the occurrence of any event giving rise to the operation of Section 2.10(a), Section 2.10(b) or Section 4.04 with respect to any Lender which (i) results in such Lender charging to the Borrower increased costs in excess of those being generally charged by the other Lenders, or (ii) are not charged by such Lender to its other borrowers that are similarly situated to the Borrower with respect to the event giving rise to the operation of Section 2.10(a), Section 2.10(b) or Section 4.04 (as applicable), or (b) in the case of a refusal by a Lender to consent to a proposed change, amendment waiver, discharge or termination with respect to this Agreement which has been approved by the Required Lenders as (and to the extent) provided in Section 11.12(b), the Borrower shall have the right, in accordance with Section 11.04(b), if no Default or Event of Default then exists or would exist after giving effect to such replacement, to replace such Lender (the Replaced Lender) with one or more other Eligible Transferees (collectively, the Replacement Lender) and each of which shall be reasonably acceptable to the Administrative Agent; provided that:

(i) at the time of any replacement pursuant to this Section 2.13, the Replacement Lender shall enter into one or more Assignment and Assumption Agreements pursuant to Section 11.04(b) (and with all fees payable pursuant to said Section 11.04(b) to be paid by the Borrower) pursuant to which the Replacement Lender shall acquire all of the outstanding Loans of the Replaced Lender and all Warrants held by the Replaced Lender and, in connection therewith, shall pay to the Replaced Lender in respect thereof an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the respective Replaced Lender and (B) and any other amounts payable to it hereunder and under the Loan Documents;

(ii) all obligations of the Borrower then owing to the Replaced Lender (other than those specifically described in clause (i) above in respect of which the assignment purchase price has been, or is concurrently being, paid) shall be paid in full to such Replaced Lender concurrently with such replacement;

(iii) [Reserved]; and

(iv) with respect to any replacement as a result of the operation of Section 2.10(a), Section 2.10(b), the Replacement Lender does not, at the time of such replacement, charge such increased costs to the Borrower.

Upon receipt by the Replaced Lender of all amounts required to be paid to it pursuant to this Section 2.13, the Administrative Agent shall be entitled (but not obligated) and authorized to execute an Assignment and Assumption Agreement on behalf of such Replaced Lender, and any such Assignment and Assumption Agreement so executed by the Administrative Agent and the Replacement Lender shall be effective for purposes of this Section 2.13 and Section 11.04. Upon the execution of the respective Assignment and Assumption Agreement, the payment of amounts referred to in clauses (i) and (ii) above, recordation of the assignment on the Register by the Administrative Agent pursuant to Section 11.15 and, if so requested by the Replacement Lender, delivery to the Replacement Lender of the appropriate Note

executed by the Borrower, the Replacement Lender shall become a Lender hereunder and the Replaced Lender shall cease to constitute a Lender hereunder, except with respect to indemnification and confidentiality provisions under this Agreement (including, without limitation, Sections 2.10, 4.04, 10.06, 11.01, 11.06 and 11.16), which shall survive as to such Replaced Lender.

2.14. Incremental Loan Commitments. (a) The Borrower shall have the right to request from time to time (by written notice to the Administrative Agent, who shall send a copy of such notice to each Lender) that one or more Lenders (and/or one or more other Persons, reasonably acceptable to the Administrative Agent, which will become Lenders as provided below) provide Incremental Loan Commitments and, subject to the terms and conditions contained in this Agreement and the relevant Incremental Loan Commitment Agreement, make Incremental Loans pursuant thereto, so long as (x) no Default or Event of Default then exists or would result therefrom, (y) all Incremental Loans are incurred on the date of the effectiveness of the applicable Incremental Loan Commitment Agreement pursuant to which the related Incremental Loan Commitments are provided, and (z) the Borrower shall have demonstrated to the Administrative Agent's reasonable satisfaction that the full amount of the applicable Incremental Loans may be incurred without violating the terms of any material Indebtedness of the Borrower or any of its Subsidiaries or the documentation governing any such Indebtedness; provided, however, that (i) no Lender shall be obligated to provide an Incremental Loan Commitment as a result of any such request by the Borrower until such time, if any, as such Lender has agreed in its sole discretion to provide an Incremental Loan Commitment and has executed and delivered to the Administrative Agent an Incremental Loan Commitment Agreement as provided in clause (b) of this Section 2.14, (ii) any Lender (or any other Person, reasonably acceptable to the Administrative Agent, which will qualify as an Eligible Transferee) may so provide an Incremental Loan Commitment without the consent of any other Lender, (iii) the amount of each Tranche of Incremental Loan Commitments (whether constituting a new Tranche of Incremental Loans or being added to (and thereafter constituting a part of) a then outstanding Tranche of Loans) shall be in a minimum aggregate amount (for all Lenders and Eligible Transferees which will become Lenders) of at least \$1,000,000, (iv) the aggregate amount of all Incremental Loan Commitments permitted to be provided pursuant to this Section 2.14 shall not exceed \$7,500,000, (v) any fees payable to each Incremental Loan Lender in respect of each Incremental Loan Commitment shall be separately agreed to by the Borrower, the Administrative Agent and each such Incremental Loan Lender, (vi) each Tranche of Incremental Loans shall (I) have an Incremental Loan Maturity Date of no earlier than the Initial Loan Maturity Date and (II) have a Weighted Average Life to Maturity of no less than the Weighted Average Life to Maturity as then in effect for the Initial Loans, (vii) the interest rate for any Incremental Loans (which, for such purposes only, shall be determined by the Administrative Agent and deemed to include all original issue discount (amortized over three years from the relevant Incremental Loan Borrowing Date) payable to all Lenders providing such Incremental Loans, but exclusive of any arrangement, structuring or other fees payable in connection therewith that are not shared with all Lenders providing such Incremental Loans and exclusive of any discount or other incentive attributable to Warrants or other rights in Borrower Common Stock issued in connection with the relevant Incremental Loans) may exceed the interest rate applicable to the then outstanding Initial Loans (as such interest rate shall have been determined by the Administrative Agent on the same basis provided in the immediately preceding parenthetical) if the Applicable Margin for then outstanding Initial Loans is increased to the Applicable Increased Term Loan Rate for such Incremental Loans, (viii) each Incremental Loan Commitment Agreement shall specifically designate the Tranche or Tranches of the Incremental Loan Commitments being provided thereunder (which Tranche shall be a new Tranche (i.e., not the same as the Initial Loans or any other then existing Tranche of Loans) unless the requirements of Section 2.14(c) are satisfied), (ix) all Incremental Loans (and all interest, fees and other amounts payable thereon) shall be Obligations under this Agreement and the other applicable Credit Documents and shall

be secured by the Security Documents, and guaranteed under the Subsidiaries Guaranty, on a pari passu basis with all other Obligations secured by the Security Documents and guaranteed under the Subsidiaries Guaranty, (x) each Lender (including any Eligible Transferee who will become a Lender) agreeing to provide an Incremental Loan Commitment pursuant to an Incremental Loan Commitment Agreement shall, subject to the satisfaction of the relevant conditions set forth in this Agreement, make Incremental Loans under the Tranche specified in such Incremental Loan Commitment Agreement as provided in Section 2.01(c) and such Incremental Loans shall thereafter be deemed to be Incremental Loans under such Tranche for all purposes of this Agreement and the other applicable Credit Documents, (xi) all interest payable in respect of any Incremental Loans shall be PIK interest and (xii) all actions taken by the Borrower pursuant to this Section 2.14 shall be done in coordination with the Administrative Agent .

(b) In connection with any provision of Incremental Loan Commitments pursuant to this Section 2.14, (i) the Borrower, the Administrative Agent and each such Lender or other Eligible Transferee reasonably acceptable to the Administrative Agent (each, an Incremental Loan Lender) which agrees to provide an Incremental Loan Commitment shall execute and deliver to the Administrative Agent an Incremental Loan Commitment Agreement in form and substance reasonably satisfactory to the Administrative Agent (each, an Incremental Loan Commitment Agreement), with the effectiveness of such Incremental Loan Lender's Incremental Loan Commitment to occur upon delivery of such Incremental Loan Commitment Agreement to the Administrative Agent, the payment of any fees required in connection therewith (including, without limitation, any agreed upon up-front or arrangement fees owing to the Administrative Agent) and the satisfaction of the other terms and conditions described in this Section 2.14 and in the respective Incremental Loan Commitment Agreement, and (ii) the Borrower shall deliver to the Administrative Agent (w) an opinion or opinions, in form and substance reasonably satisfactory to the Administrative Agent, from counsel to the Borrower and dated the applicable Incremental Loan Borrowing Date, covering such matters relating to the provision of the Incremental Loan Commitments as may be reasonably requested by the Administrative Agent, (x) a solvency certificate from the chief financial officer of the Borrower, dated the applicable Incremental Loan Borrowing Date, substantially in the form of Exhibit G (with appropriate modifications that are reasonably acceptable to the Administrative Agent to reflect the Incremental Loans and any related transactions to occur on such date), (y) such other officers' certificates, board of director resolutions and evidence of good standing as the Administrative Agent shall reasonably request and (z) Warrants registered in the name of each Incremental Loan Lender providing such Incremental Loan Commitments, each duly authorized, executed and delivered by Borrower for such number of Borrower Common Stock as may be agreed between the Borrower and such Incremental Lender. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Loan Commitment Agreement, and at such time to the extent requested by any Incremental Loan Lender, an appropriate Note will be issued at the Borrower's expense to such Incremental Loan Lender, to be in conformity with the requirements of Section 2.05 (with appropriate modification) to the extent needed to reflect the new Incremental Loans made by such Incremental Loan Lender.

(c) Notwithstanding anything to the contrary contained above in this Section 2.14, the Incremental Loan Commitments provided by an Incremental Loan Lender or Incremental Loan Lenders, as the case may be, pursuant to each Incremental Loan Commitment Agreement shall constitute a new Tranche, which shall be separate and distinct from the existing Tranches pursuant to this Agreement (with a designation which may be made in letters (i.e., A, B, C, etc.), numbers (1, 2, 3, etc.) or a combination thereof (i.e., A-1, A-2, A-3, B-1, B-2, B-3, C-1, C-2, C-3, etc.), provided that, with the consent of the Administrative Agent, the parties to a given Incremental Loan Commitment Agreement may specify therein that the respective Incremental Loans made pursuant thereto shall constitute part of, and be added to, a then outstanding Tranche of Loans so long as the following requirements are satisfied:

(i) the Incremental Loans to be made pursuant to such Incremental Loan Commitment Agreement shall have the same Maturity Date and shall have the same Applicable Margin as the Tranche of Loans to which the new Incremental Loans are being added; and

(ii) on the date of the making of such new Incremental Loans, such new Incremental Loans shall be added to (and form part of) each Borrowing of outstanding Loans of the respective Tranche on a pro rata basis (based on the relative sizes of the various outstanding Borrowings), so that each applicable Lender will participate proportionately in each then outstanding Borrowing of Loans of the respective Tranche.

SECTION 3. Fees; Reductions of Commitment.

3.01. Fees. (a) The Borrower agrees to pay to the Administrative Agent such fees as may have been, or are hereafter, agreed to in writing from time to time by the Borrower or any of its Subsidiaries and the Administrative Agent.

(b) [Reserved]

(c) The Borrower shall pay to the Administrative Agent for distribution to the respective Incremental Loan Lenders such fees and other amounts, if any, as are specified in each Incremental Loan Commitment Agreement, with such fees and other amounts, if any, to be payable on the respective Incremental Loan Borrowing Date.

3.02. Mandatory Reduction of Commitments. (a) The Total Initial Loan Commitment (and the Initial Loan Commitment of each Lender) shall terminate in its entirety on the Closing Date (after giving effect to the incurrence of Initial Loans on such dates).

(b) In addition to any other mandatory commitment reductions pursuant to this Section 3.02, the Total Incremental Loan Commitment (and the Incremental Loan Commitment of each Lender) under each Tranche of Incremental Loans pursuant to the applicable Incremental Loan Commitment Agreement shall terminate in its entirety on the Incremental Loan Borrowing Date for such Tranche of Incremental Loans (after giving effect to the incurrence of Incremental Loans of such Tranche on such date).

SECTION 4. Prepayments; Payments; Taxes

4.01. Voluntary Prepayments. (a) After the satisfaction of the Discharge Conditions or with the prior written consent of First-Lien Lenders (in the manner and to the extent required under the First-Lien Credit Agreement), the Borrower shall have the right to prepay the Loans in whole or in part at any time and from time to time on the following terms and conditions: (i) the Borrower shall give the Administrative Agent prior to 12:00 Noon (New York City time) at the Notice Office at least one Business Day's prior written notice (or telephonic notice promptly confirmed in writing) of its intent to prepay the Loans, which notice (in each case) shall specify whether Initial Loans or Incremental Loans under a given Tranche shall be prepaid, the amount of such prepayment and which notice the Administrative Agent shall, promptly transmit to each of the Lenders; (ii) each partial prepayment of Loans pursuant to this Section 4.01(a) shall be in an aggregate principal amount of at least \$1,000,000 (or

such lesser amount as is acceptable to the Administrative Agent); provided that no partial prepayment of the Loans shall reduce the outstanding principal amount of Loans to an amount less than the Minimum Borrowing Amount; and (iii) each prepayment pursuant to this Section 4.01(a) in respect of any Loans shall be applied pro rata among the Loans;

(b) In the event of certain refusals by a Lender to consent to certain proposed changes, waivers, discharges or terminations with respect to this Agreement which have been approved by the Required Lenders as (and to the extent) provided in Section 11.12(b), the Borrower may, upon five Business Days prior written notice to the Administrative Agent at the Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), repay all Loans of such Lender, together with accrued and unpaid interest, Fees and all other amounts then owing to such Lender in accordance with, and subject to the requirements of Section 11.12(b), so long as the consents, if any, required by Section 11.12(b) in connection with the repayment pursuant to this clause (b) shall have been obtained.

4.02. Mandatory Repayments. (a) In addition to any other mandatory repayments pursuant to this Section 4.02, all then outstanding Loans of a respective Tranche shall be repaid in full on the Maturity Date for such Tranche.

(b) In addition to any other mandatory repayments pursuant to this Section 4.02, upon the occurrence of a Change of Control, the Borrower shall make an offer to prepay the Loans in full in accordance with the provisions of Section 4.02(i).

(c) After the satisfaction of the Discharge Conditions and in addition to any other mandatory repayments pursuant to this Section 4.02, on each date on or after the Closing Date upon which the Borrower or any of its Subsidiaries receives any cash proceeds from any capital contribution or any sale or issuance of its Equity Interests (other than, in any case, (i) issuances of Equity Interests to the Borrower or any Subsidiary of the Borrower to the extent made by any Subsidiary of the Borrower, (ii) any capital contributions to any Subsidiary of the Borrower to the extent made by the Borrower or any Subsidiary of the Borrower, (iii) sales or issuances of the Borrower's Common Stock to employees, officers, consultants and/or directors of the Borrower and its Subsidiaries (including as a result of the exercise of any options with respect thereto), (iv) Issuances of Equity Interests pursuant to Warrants issued to any Lender or other warrants or rights outstanding as of and as in effect on the Closing Date, (v) other sales or issuances of Equity Interests resulting in Net Cash Proceeds to Borrower and its Restricted Subsidiaries of less than \$1,000,000 in any twelve month period, provided that once such \$1,000,000 threshold is reached or exceeded, the prepayment obligations set forth in this section shall apply with respect to the full amount of such Net Cash Proceeds or (vi) sales or issuance of the Borrower's Common Stock to any Permitted Holder, the Borrower shall make an offer to prepay the Loans by an amount equal to 25% of the Net Cash Proceeds of such capital contribution or sale or issuance of Equity Interests in accordance with the requirements of Sections 4.02(i).

(d) After the satisfaction of the Discharge Conditions and in addition to any other mandatory repayments pursuant to this Section 4.02, if the Borrower or any of its Subsidiaries receives any cash proceeds from any issuance or incurrence by the Borrower or any of its Subsidiaries of Indebtedness (other than Indebtedness permitted to be incurred pursuant to Section 8.04), the Borrower shall make an offer to prepay the Loans by an amount equal to 100% of the Net Cash Proceeds of the respective issuance or incurrence of Indebtedness in accordance with the requirements of Section 4.02(i).

(e) After the satisfaction of the Discharge Conditions and in addition to any other mandatory repayments pursuant to this Section 4.02, if the Borrower or any of its Subsidiaries receives any cash proceeds from any Asset Sale (other than any Asset Sales or series of related Asset Sales where the aggregate Net Sale Proceeds therefrom do not exceed \$1,000,000 individually and \$2,500,000 in the aggregate in any fiscal year of the Borrower), the Borrower shall make an offer (each an Asset Sale Offer), to prepay the Loans by an amount equal to 100% of the Net Sale Proceeds therefrom in accordance with the requirements of Section 4.02(i); provided, however, such Net Sale Proceeds shall not be required to be so applied on such date so long as no Default or Event of Default then exists and the Borrower delivers a certificate (which certificate shall set forth the estimates of the Net Sale Proceeds to be so expended) to the Administrative Agent stating that such Net Sale Proceeds shall be used to purchase assets (other than working capital) used or to be used in the businesses permitted pursuant to Section 8.09 within the Relevant Reinvestment Period, and provided further, that if all or any portion of such Net Sale Proceeds not required to be so applied as provided above in this Section 4.02(e) are not so reinvested within such Relevant Reinvestment Period, the Borrower shall make an offer to prepay the Loans by an amount equal to such remaining portion in accordance with Section 4.02(i).

(f) After the satisfaction of the Discharge Conditions and in addition to any other mandatory repayments pursuant to this Section 4.02, if the Borrower or any of its Subsidiaries receives any cash proceeds from any Recovery Event (other than Recovery Events where the Net Insurance Proceeds therefrom do not exceed \$250,000 individually and \$500,000 in the aggregate in any fiscal year of the Borrower), the Borrower shall make an offer, within five Business Days of such receipt, to prepay the Loans by an amount equal to 100% of the Net Insurance Proceeds from such Recovery Event in accordance with the requirements of Section 4.02(i); provided, however, such Net Insurance Proceeds shall not be required to be so applied on such date so long as no Default or Event of Default then exists and the Borrower delivers a certificate to the Administrative Agent stating that such Net Insurance Proceeds shall be used to replace or restore any properties or assets in respect of which such Net Insurance Proceeds were paid within the Relevant Reinvestment Period (which certificate shall set forth the estimates of the Net Insurance Proceeds to be so expended), and provided, further, that if all or any portion of such Net Insurance Proceeds not required to be so applied pursuant to the preceding proviso are not so used within the Relevant Reinvestment Period, the Borrower shall make an offer to prepay the Loans by an amount equal to such remaining portion in accordance with the requirements of Section 4.02(i).

(g) After the satisfaction of the Discharge Conditions and in addition to any other mandatory repayments pursuant to this Section 4.02, on each Excess Cash Payment Date, the Borrower shall make an offer to prepay the Loans by an amount equal to the Applicable Excess Cash Flow Prepayment Percentage of the Excess Cash Flow for the related Excess Cash Payment Period in accordance with the requirements of Section 4.02(i).

(h) If the Borrower is required to make an offer to prepay the Loans pursuant to Sections 4.02(b), (c), (d), (e), (f) or (g), the Borrower shall:

(i) within five Business Days following the event or circumstance as a result of which such offer to prepay is required to be made, deliver a written notice to the Administrative Agent (which shall promptly furnish such notice to the Lenders) which shall (A) describe such event or circumstance, (B) state that each Lender has the right to require the Borrower to prepay all or a portion of such Lender's Loan, as applicable (subject to the pro rata provisions in Section 4.02(i) and in the case of any Change of Control Offer, subject to clause (v) hereof), at par, plus accrued and unpaid interest to the date of prepayment, by delivering acceptance of such notice no earlier than five Business Days prior to the prepayment date referred to in clause (C); and (C) specify a prepayment date for such prepayment (which shall be no earlier than 30 days nor later than 60 days from the date such notice is sent);

(ii) on the prepayment date referred to in clause (i)(C) above, the Borrower shall (subject to the pro rata provisions in Section 4.02(i)), prepay the Loans (or portion thereof), as applicable, of the Lenders who accept the offer to prepay in accordance with the terms thereof at a purchase price in cash equal to par, plus accrued and unpaid interest to the date of prepayment, it being understood and agreed that any Lender that has failed to deliver acceptance of the notice referred to in clause (i)(B) above shall be deemed to have rejected the offer to prepay;

(iii) in respect of any amount which is rejected by the Lenders pursuant to clauses (i) and (ii) above under an initial offer to repay (the First Offer) (A) make a second offer to prepay the Loans (the Second Offer) by such amount to the accepting Lenders under the First Offer; and

(iv) in respect of any amount which is rejected by the Lenders under the Second Offer, retain such amount for application for any purpose not prohibited by this Agreement.

(v) notwithstanding anything to the contrary contained herein, in the case of a Change of Control Offer, such offer shall be made subject to the prior rights of the First-Lien Lenders, as described in Section 4.02 of the First-Lien Credit Agreement.

(i) With respect to each repayment of Loans required by this Section 4.02, (i) if any repayment of Loans shall reduce the outstanding Loans to an amount less than the Minimum Borrowing Amount, then at such time all outstanding Loans shall be prepaid in full; and (ii) to the extent the Obligations to be prepaid exceed the Net Cash Proceeds, Net Sale Proceeds or Net Insurance Proceeds (in each case, if applicable) or in the case of a Asset Sale Offer, the amount available therefor or other amount by which the Borrower is required to prepay the Loans in accordance with this Section 4.02 each repayment of any Loans shall be applied pro rata to the Loans held by the various Lenders (based on the respective principal amounts thereof).

4.03. Method and Place of Payment. Except as otherwise specifically provided herein, all payments under this Agreement shall be made to the Administrative Agent for the account of the Lender or Lenders entitled thereto not later than 2:00 P.M. (New York City time) on the date when due and shall be made in Dollars in immediately available funds at the Payment Office. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

4.04. Net Payments. (a) All payments made by the Credit Parties hereunder will be made without setoff, counterclaim or other defense. Except as provided in Section 4.04(b) or 4.04(c), all such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments (but excluding, except as provided in the second succeeding sentence, (A) any tax imposed on or measured by the net income or net profits of a Lender pursuant to the laws of the jurisdiction in which it is organized, or the jurisdiction in which the principal office or applicable lending office of such Lender is located or any subdivision thereof or therein and (B) any branch profits taxes imposed by the United States or any similar tax imposed by any jurisdiction in which such Lender is

engaged in a trade business (other than a trade or business deemed to arise by the transactions contemplated herein), maintains a permanent establishment, or is subject to tax on the same or similar basis as residents of such jurisdiction, and all interest, penalties or similar liabilities with respect thereto, levies, imposts, duties, fees, assessments or other charges (all such excluded taxes, levies, imposts, duties, fees, assessments or other charges, collectively referred to as Excluded Taxes and all other taxes, levies, imposts, duties, fees, assessments or other charges (including all interest penalties or similar liabilities with respect thereto) Taxes). If any Taxes are so levied or imposed, the Credit Parties agree to pay the full amount of such Taxes, and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, after withholding or deduction for or on account of any Taxes (including any Excluded Taxes imposed on such additional amounts), will not be less than the amount provided for herein. The Credit Parties will furnish to the Administrative Agent within 45 days after the date the payment of any Taxes is due pursuant to applicable law certified copies of tax receipts evidencing such payment by such Credit Parties. The Credit Parties agree to indemnify and hold harmless each Lender, and reimburse such Lender upon its written request, for the amount of any Taxes so levied or imposed and paid by such Lender.

(b) Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for U.S. Federal income tax purposes agrees to deliver to the Borrower and the Administrative Agent on or prior to the Closing Date with respect to a Closing Date Lender or, in the case of a Lender that is an assignee or transferee of an interest under this Agreement pursuant to Section 2.13 or 11.04(b) (unless the respective Lender was already a Lender hereunder immediately prior to such assignment or transfer), on the date of such assignment or transfer to such Lender or, in the case of an Eligible Transferee that becomes a Lender pursuant to Section 11.04 on the date such Eligible Transferee becomes a Lender, (i) two accurate and complete original signed copies of Internal Revenue Service Form W-8ECI, Form W-8BEN (with respect to a complete exemption under an income tax treaty) or Form W-8IMY (or successor forms) certifying to such Lender's entitlement as of such date to a complete exemption from United States withholding tax with respect to payments to be made under this Agreement, or (ii) if the Lender is not a bank within the meaning of Section 881(c)(3)(A) of the Code and cannot deliver either Internal Revenue Service Form W-8ECI, Form W-8BEN (with respect to a complete exemption under an income tax treaty) or Form W-8IMY (or any successor forms) pursuant to clause (i) above, (x) a certificate substantially in the form of Exhibit C (any such certificate, a Section 4.04(b)(ii) Certificate) and (y) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN (with respect to the portfolio interest exemption) (or successor form) certifying to such Lender's entitlement as of such date to a complete exemption from United States withholding tax with respect to payments of interest to be made under this Agreement. In addition, each Lender agrees that from time to time after the Closing Date with respect to a Closing Date Lender, when a lapse in time or change in such Lender's circumstances renders the previous certification obsolete or inaccurate in any material respect, such Lender will deliver to the Borrower and the Administrative Agent two new accurate and complete original signed copies of Internal Revenue Service Form W-8ECI, Form W-8BEN (with respect to the benefits of any income tax treaty), Form W-8BEN (with respect to the portfolio interest exemption) or Form W-8IMY and a Section 4.04(b)(ii) Certificate, as the case may be, and such other forms as may be required in order to confirm or establish the entitlement of such Lender to a continued exemption from or reduction in United States withholding tax with respect to payments under this Agreement, or such Lender shall immediately notify the Borrower and the Administrative Agent of its inability to deliver any such form or certificate, in which case such Lender shall not be required to deliver any such form or certificate pursuant to this Section 4.04(b). Notwithstanding anything to the contrary contained in Section 4.04(a) but subject to Section 11.04(b) and the immediately succeeding sentence, (x) the Credit Parties shall be entitled, to the extent they are required to do so by law, to deduct or

withhold income or similar taxes imposed by the United States from interest, Fees or other amounts payable hereunder for the account of any Lender which is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for U.S. Federal income tax purposes to the extent that such Lender has not provided to the Borrower U.S. Internal Revenue Service forms that establish a complete exemption from such deduction or withholding and (y) the Borrower shall not be obligated pursuant to Section 4.04(a) to gross-up payments to be made to a Lender in respect of United States federal withholding taxes or with respect to any amounts withheld pursuant to the immediately preceding clause (x) (I) if such Lender has not provided to the Borrower the Internal Revenue Service Forms required to be provided to the Borrower pursuant to this Section 4.04(b) or (II) in the case of a payment to a Lender described in clause (ii) above, to the extent that such forms do not establish a complete exemption from withholding of such taxes. Notwithstanding anything to the contrary contained in the preceding sentence or elsewhere in this Section 4.04 and except as set forth in Section 11.04(b), the Borrower agrees to pay any additional amounts and to indemnify each Lender in the manner set forth in Section 4.04(a) (without regard to the identity of the jurisdiction requiring the deduction or withholding) in respect of any amounts deducted or withheld by it as described in the immediately preceding sentence as a result of any changes that are effective after the Closing Date with respect to a Closing Date Lender in any applicable law, treaty, governmental rule, regulation, guideline or order, or in the interpretation thereof, relating to the deducting or withholding of income or similar taxes.

(c) Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Code) for U.S. Federal income tax purposes agrees to deliver to the Borrower and the Administrative Agent, to the extent requested by either the Borrower or the Administrative Agent, two accurate and complete original signed copies of Internal Revenue Services Form W-9 (or successor forms), or other documentation reasonably satisfactory to the Borrower, certifying to such Lender's exemption from back-up withholding.

(d) If the Borrower pays any additional amount under this Section 4.04 to a Lender and such Lender determines in its sole discretion that it has actually received or realized in connection therewith any refund of Taxes which the additional amount were paid (a Tax Benefit), such Lender shall pay to the Borrower an amount that the Lender shall, in its sole discretion, determine is equal to the net benefit, after tax, that was obtained by the Lender in such year as a consequence of such Tax Benefit; provided, however, that (i) any Lender may determine, in its sole discretion consistent with the policies of such Lender, whether to seek a Tax Benefit; (ii) any Taxes that are imposed on a Lender as a result of a disallowance or reduction of any Tax Benefit with respect to which such Lender has made a payment to a Credit Party pursuant to this Section 4.04(d) shall be treated as a Tax for which the Borrower is obligated to indemnify such Lender pursuant to this Section 4.04 without any exclusions or defenses; (iii) nothing in this Section 4.04(d) shall require the Lender to disclose any confidential information to any Credit Party (including, without limitation, its tax returns); and (iv) no Lender shall be required to pay any amounts pursuant to this Section 4.04(d) at any time which a Default or Event of Default exists.

SECTION 5. Conditions Precedent. The obligation of (i) each Closing Date Lender to make Loans on the Closing Date was subject at the time of the making of such Loans to the satisfaction or waiver of the conditions set forth in Sections 5.01 to 5.15 (inclusive), and (ii) the obligation of each Incremental Loan Lender to make Incremental Loans on the applicable Incremental Loan Borrowing Date is subject to the satisfaction or waiver of the conditions set forth in Sections 5.14 to 5.16 (inclusive).

5.01. Notes. On or prior to the Closing Date there shall have been delivered to the Administrative Agent for the account of each of the Lenders that has requested the same the appropriate Notes executed by the Borrower, in the amount, maturity and as otherwise provided herein.

5.02. Officer's Certificate. On the Closing Date the Administrative Agent shall have received a certificate, dated the Closing Date and signed on behalf of the Borrower by the chairman of the board, the chief executive officer, the president or any vice president of the Borrower, certifying on behalf of the Borrower that all of the conditions in Sections 5.07 (with respect and by reference to the Closing Date only), 5.08, 5.14 and 6.01 have been satisfied on such date.

5.03. [Reserved].

5.04. Company Documents; Proceedings; etc. (a) On the Closing Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Closing Date, signed by an officer of such Credit Party and attested to by another officer of such Credit Party, in a form acceptable to the Administrative Agent with appropriate insertions, together with copies of the certificate or articles of incorporation and by-laws (or other equivalent organizational documents), as applicable, of such Credit Party and the resolutions of such Credit Party referred to in such certificate, and each of the foregoing shall be in form and substance reasonably acceptable to the Administrative Agent.

(b) On the Closing Date, the Administrative Agent shall have received all governmental approvals, good standing or similar certificates and bring-down telegrams or facsimiles, if any, which the Administrative Agent reasonably may have requested in connection therewith, such documents and papers where appropriate to be certified by proper Business or Governmental Authorities.

5.05. Employee Benefit Plans; Shareholders' Agreements; Management Agreements; Employment Agreements; Collective Bargaining Agreements; Tax Sharing Agreements; Existing Indebtedness Agreements. There has been made available to the Administrative Agent true and correct copies of the following documents:

(i) all Plans (and for each Plan that is required to file an annual report on Internal Revenue Service Form 5500-series, a copy of the most recent such report (including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information), and for each Plan that is a single-employer plan as defined in Section 4001(a)(15) of ERISA, the most recently prepared actuarial valuation therefor) and all Multiemployer Plans (provided that the foregoing shall apply in the case of any Multiemployer Plan, only to the extent that any document described herein is in the possession of the Borrower, or any of its Subsidiaries and/or any ERISA Affiliate or is reasonably available thereto from the sponsor or trustee of any such plan) (collectively, the Employee Benefit Plans);

(ii) all agreements entered into by the Borrower or any of its Subsidiaries governing the terms and relative rights of its equity interests and any agreements entered into by its shareholders relating to any such entity with respect to its equity interests (collectively, the Shareholders Agreements);

(iii) all material agreements with members of, or with respect to, the management of the Borrower or any of its Subsidiaries other than Employment Agreements (collectively, the Management Agreements);

(iv) all material employment agreements entered into by the Borrower or any of its Subsidiaries (collectively, the Employment Agreements);

(v) all collective bargaining agreements applying or relating to any employee of the Borrower or any of any of its Subsidiaries (collectively, the Collective Bargaining Agreements);

(vi) all tax sharing, tax allocation and other similar agreements entered into by the Borrower or any of its Subsidiaries (collectively, the Tax Sharing Agreements); and

(vii) all agreements evidencing or relating to Indebtedness of the Borrower or any of its Subsidiaries which is to remain outstanding after giving effect to the Transaction (the Existing Indebtedness Agreements);

all of which Employee Benefit Plans, Shareholders' Agreements, Management Agreements, Employment Agreements, Collective Bargaining Agreements, Tax Sharing Agreements and Existing Indebtedness Agreements shall be in full force and effect on the Closing Date.

5.06. Warrants. On the Closing Date, the Administrative Agent shall have received (i) Warrants registered in the name of each Lender or its designated Affiliate, each duly authorized, executed and delivered by the Borrower, (ii) evidence of the authorization for the issuance of all Warrant Stock and (iii) a registration rights agreement in form and substance satisfactory to the Administrative Agent. The Warrants referred to in clause (i) of the preceding sentence shall, for each of the Closing Date Lenders, in the aggregate be exercisable in respect of 3,000,000 shares of Borrower Common Stock.

5.07. Adverse Change, Approvals. (a) Since December 31, 2008, nothing shall have occurred (and the Administrative Agent shall not have become aware of any facts or conditions not previously known) that would reasonably be expected to have (i) a Material Adverse Effect or (ii) a material adverse effect on the Transaction.

(b) On or prior to the Closing Date, all necessary governmental (domestic and foreign) and material third party approvals and/or consents in connection with the Transaction, the other transactions contemplated hereby and the granting of Liens under the Credit Documents shall have been obtained and remain in effect, and all applicable waiting periods with respect thereto shall have expired without any action being taken by any competent authority which restrains, prevents or imposes materially adverse conditions upon the consummation of the Transaction or the other transactions contemplated by the Documents or otherwise referred to herein or therein. On the Closing Date, there shall not exist any judgment, order, injunction or other restraint issued or filed or a hearing seeking injunctive relief or other restraint pending or notified that would reasonably be expected to have a Material Adverse Effect.

5.08. Litigation. On the Closing Date, there shall be no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened (a) with respect to the Transaction, this Agreement or any other Document, or (b) which, if adversely determined, would reasonably be expected to have a Material Adverse Effect.

5.09. Guaranty and Collateral Agreement. On the Closing Date, as required by the Collateral and Guarantee Requirement (a) each Credit Party shall have duly authorized, executed and delivered the Collateral Agreement in form satisfactory to the Administrative Agent (as amended, modified, restated and/or supplemented from time to time, the Guaranty and Collateral Agreement) and, in connection therewith, the Credit Parties shall have delivered to the Collateral Agent:

(i) all of the Collateral consisting of certificated securities and promissory notes, if any, referred to therein and then owned by such Credit Party, (x) endorsed in blank in the case of any such promissory notes and (y) together with executed and undated endorsements for transfer in the case of any such certificated securities (it being understood that this condition shall be deemed satisfied by the delivery of such Collateral to the First-Lien Collateral Agent pursuant to the First-Lien Credit Documents);

(ii) proper financing statements (Form UCC-1 or the equivalent) fully executed or authorized for filing under the UCC or other appropriate filing offices of each jurisdiction as may be necessary to perfect the security interests purported to be created by the Guaranty and Collateral Agreement;

(iii) upon request, copies of requests for information or reports as of a recent date, listing all effective financing statements that name the Borrower or any other Credit Party as debtor and that are filed where the respective Credit Party is organized together with copies of such other financing statements that name the Borrower or any other Credit Party as debtor (none of which shall cover any of the Collateral except (x) to the extent evidencing Permitted Liens or (y) those in respect of which the Collateral Agent shall have received termination statements (Form UCC-3 or such other termination statements as shall be required by local law) fully executed and/or authorized for filing); and

(iv) evidence of the completion (or arrangements therefor reasonably satisfactory to the Collateral Agent) of all other recordings and filings of, or with respect to, and all action necessary in connection with, the Guaranty and Collateral Agreement as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable, to perfect and protect the security interests intended to be created by the Guaranty and Collateral Agreement; and

(v) evidence that all other actions necessary or, in the reasonable opinion of the Collateral Agent, desirable to perfect and protect the security interests purported to be created by the Guaranty and Collateral Agreement have been taken, and the Guaranty and Collateral Agreement shall be in full force and effect.

5.10. Financial Statements. On or prior to the Closing Date, the Borrower shall have made available to the Administrative Agent true and correct copies of the historical financial statements, which historical financial statements shall be in the same form as those set forth in Schedule 5.10.

5.11. Solvency Certificate; Insurance Certificates. The Administrative Agent shall have received a solvency certificate from the chief financial officer of the Borrower substantially in the form of Exhibit G.

5.12. Fees, etc. On the Closing Date, the Borrower shall have paid to the Administrative Agent (and its relevant affiliates), the Collateral Agent and each Lender all costs, fees and expenses (including, without limitation, invoiced legal fees and expenses) and other compensation expressly contemplated hereby (or otherwise agreed to) payable to the Administrative Agent (and/or its relevant affiliates), the Collateral Agent or such Lender to the extent then due.

5.13. [Reserved].

5.14. No Default; Representations and Warranties. At the time of the Borrowing on the Closing Date and also after giving effect thereto (a) there shall exist no Default or Event of Default and (b) all representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on the date of such Borrowing (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date).

5.15. Notice of Borrowing. Prior to the making of each Loan, the Administrative Agent shall have received a Notice of Borrowing.

5.16. Incremental Loans. Prior to the incurrence of any Incremental Loans of a given Tranche, the Borrower shall have satisfied all of the applicable conditions set forth in Section 2.14 and in the relevant Incremental Loan Commitment Agreement.

In determining the satisfaction of the conditions specified in this Section 5, (a) to the extent any item is required to be satisfactory to any Lender, such item shall be deemed satisfactory to each Lender which has not notified the Administrative Agent in writing prior to the occurrence of the Closing Date (or the applicable Incremental Loan Borrowing Date) that the respective item or matter does not meet its satisfaction and (b) in determining whether any Lender is aware of any fact, condition or event that has occurred and which would reasonably be expected to have a Material Adverse Effect or a material adverse effect of the type described in Section 5.07, each Lender which has not notified the Administrative Agent in writing prior to the occurrence of the Closing Date of such fact, condition or event shall be deemed not to be aware of any such fact, condition or event on the Closing Date. Upon the Administrative Agent's good faith determination that the conditions specified in this Section 5 have been met (after giving effect to the preceding sentence), then the Closing Date shall have been deemed to have occurred, regardless of any subsequent determination that one or more of the conditions thereto had not been met (although the occurrence of the Closing Date shall not release the Borrower from any liability for failure to satisfy one or more of the applicable conditions contained in this Section 5).

The occurrence of the Closing Date or each applicable Incremental Loan Borrowing Date, as applicable, and the acceptance of the benefits of the proceeds of each Loan shall constitute a representation and warranty by the Borrower to the Administrative Agent and each of the Lenders that all the relevant conditions specified in this Section 5 are satisfied as of that time. All of the Notes, certificates and other documents and papers referred to in this Section 5 unless otherwise specified, shall be delivered to the Administrative Agent at the Notice Office for the account of each of the Lenders and, except for the Notes, in sufficient counterparts or copies for each of the Lenders and shall be in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders.

SECTION 6. Representations, Warranties and Agreements. In order to induce the Lenders to enter into this Agreement and to make Loans, the Borrower makes the following representations, warranties and agreements, in each case after giving effect to the Transaction, all of which shall survive the execution and delivery of this Agreement and the Notes and the making of the Loans.

6.01. Company Status. Each of the Borrower and each of its Restricted Subsidiaries (a) is a duly organized and validly existing Business in good standing (or, in the case of any Foreign Subsidiary that is a Restricted Subsidiary of the Borrower, the foreign equivalent of good standing to the extent that such concept exists in such Foreign Subsidiary's jurisdiction of organization) under the

laws of the jurisdiction of its organization, (b) has the requisite Business power and authority to own its property and assets and to transact the business in which it is engaged and (c) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except for failures to be so qualified or authorized which, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. No certifications by any Governmental Authority are required for operation of the business of the Borrower and its Restricted Subsidiaries that are not in place, except for such certifications or agreements, the absence of which would not reasonably be expected to have a Material Adverse Effect.

6.02. Power and Authority. Each Credit Party has the Business power and authority to execute, deliver and perform the terms and provisions of each of the Documents to which it is party and has taken all necessary Business action to authorize the execution, delivery and performance by it of such Documents. Each Credit Party has duly executed and delivered each of the Documents to which it is party, and such Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

6.03. No Violation. Neither the execution, delivery or performance by any Credit Party of the Documents to which it is a party, nor compliance by it with the terms and provisions thereof, (a) will contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or Governmental Authority, except for any such contravention that would not reasonably be expected to have a Material Adverse Effect, (b) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of the Borrower or any of its Restricted Subsidiaries pursuant to the terms of any indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other material agreement, contract or instrument, in each case to which the Borrower or any of its Restricted Subsidiaries is a party or by which it or any its property or assets is bound or to which it may be subject except for any such conflict that would not reasonably be expected to have a Material Adverse Effect, (c) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of the Borrower or any of its Subsidiaries or (d) will be subject to any limitation on right or approval from any Governmental Authority.

6.04. Approvals. No order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (a) those that have otherwise been obtained or made on or prior to the Closing Date and which remain in full force and effect on the Closing Date and, (b) filings which are necessary to perfect the security interests created or intended to be created under the Security Documents), or exemption by, any Governmental Authority is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, (i) the execution, delivery and performance of any Document, or (ii) the legality, validity, binding effect or enforceability of any such Document except where failure to obtain or make the same would not reasonably be expected to have a Material Adverse Effect.

6.05. Financial Statements; Financial Condition; Undisclosed Liabilities. (a) The audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries at December 31, 2008 and the related consolidated statements of operations and cash flows and changes in shareholders

equity of the Borrower and its consolidated Subsidiaries for the fiscal year of the Borrower ended on such date, and the consolidated balance sheet of the Borrower and its consolidated Subsidiaries at September 30, 2009 and the related consolidated statements of income and cash flows of the Borrower and its consolidated Subsidiaries for the nine months ended on such date, in each case furnished to the Lenders prior to the Closing Date, present fairly in all material respects the consolidated financial position of the Borrower and its consolidated Subsidiaries at the date of said financial statements and the results for the respective periods covered thereby. All such financial statements have been prepared in accordance with GAAP consistently applied except to the extent provided in the notes to said financial statements.

(b) [Reserved].

(c) On and as of the Closing Date, and after giving effect to the Transaction and to all Indebtedness in connection therewith (including the Loans being incurred and Liens created by the Credit Parties), (i) the sum of the fair value of the assets, at a fair valuation, of the Credit Parties and their Subsidiaries (taken as a whole) will exceed its or their respective debts, (ii) the sum of the present fair salable value of the assets of the Credit Parties and their Subsidiaries (taken as a whole) will exceed its or their respective debts, (iii) the Credit Parties and their Subsidiaries (taken as a whole) have not incurred and does or do not intend to incur, and does or do not believe that it or they will incur, debts beyond its or their respective ability to pay such debts as such debts mature, and (iv) the Credit Parties and their Subsidiaries (taken as a whole) will have sufficient capital with which to conduct their respective businesses. For purposes of this Section 6.05(c), debt means any liability on a claim, and claim means (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured or (B) right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

(d) Except as fully disclosed in the financial statements delivered pursuant to Section 6.05(a) or in Schedule 6.05(d), and except for the Indebtedness incurred under this Agreement, there were as of the Closing Date no liabilities or obligations with respect to the Borrower, any of its Restricted Subsidiaries of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due) which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. As of the Closing Date, the Borrower knows of no basis for the assertion against it or any of its Subsidiaries of any liability or obligation of any nature whatsoever that is not fully disclosed in the financial statements delivered pursuant to Section 6.05(a) or referred to in the immediately preceding sentence which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(e) [Reserved]

(f) After giving effect to the Transaction, since December 31, 2008, nothing has occurred that has had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

6.06. Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened (a) with respect to the Transaction or any Document or (b) that has had, or, if adversely determined, would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

6.07. True and Complete Disclosure. All factual information (taken as a whole) furnished by or, with the Borrower's express authorization on behalf of the Borrower in writing to the Administrative Agent or any Lender is, and all other such factual information (taken as a whole) hereafter furnished by or, with the Borrower's express authorization on behalf of the Borrower in writing to the Administrative Agent or any Lender will be, true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided, it being understood and agreed that for purposes of this Section 6.07, such factual information shall not include any projections or any pro forma financial information or other forward-looking statements.

6.08. Use of Proceeds; Margin Regulations. (a) All proceeds of the Loans shall be used to finance the general corporate purposes of the Borrower and its Subsidiaries and to pay the fees and expenses incurred in connection with the Transaction.

(b) No part of the proceeds of any Loan will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of any Loan nor the use of the proceeds thereof will violate or be inconsistent with the provisions of Regulation T, U or X.

6.09. Tax Returns and Payments. Except as would, individually or in the aggregate, not reasonably be expected to have a Material Adverse Effect, each of the Borrower and each of its Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all Federal, state, foreign and local returns, statements, forms and reports for taxes (the Returns) required to be filed by, or with respect to the income, properties or operations of, the Borrower and/or any of its Subsidiaries; the Returns accurately reflect all liability for taxes of the Borrower and its Subsidiaries, as applicable, for the periods covered thereby; except as set forth on Schedule 6.09, each of the Borrower and each of its Subsidiaries has paid all taxes and assessments payable by it which have become due, other than those that are being contested in good faith and adequately disclosed and for which adequate reserves have been established in accordance with GAAP; there is no action, suit, proceeding, investigation, audit or claim now pending or threatened (in writing) by any authority regarding any taxes relating to the Borrower or any of its Subsidiaries; as of the Closing Date, neither the Borrower nor any of its Subsidiaries has entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the payment or collection of taxes of the Borrower or any of its Subsidiaries, or is aware of any circumstances that would cause the taxable years or other taxable periods of the Borrower or any of its Subsidiaries not to be subject to the normally applicable statute of limitations; and neither the Borrower nor any of its Subsidiaries has incurred, nor will any of them incur, any tax liability in connection with the Transaction or any other transactions contemplated hereby (it being understood that the representation contained in this sentence does not cover any future tax liabilities of the Borrower or any of its Subsidiaries arising as a result of the operation of their businesses in the ordinary course of business) or any tax liability resulting from indemnification (or yield protection provisions) under this Agreement).

6.10. Compliance with ERISA. (a) Schedule 6.10 sets forth each Plan as of the Closing Date. Each Plan (and each related trust, insurance contract or fund) is in substantial compliance with its terms and with all applicable laws, including without limitation ERISA and the Code; each Plan

(and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a determination letter from the Internal Revenue Service to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all tax law changes prior to the Economic Growth and Tax Relief Reconciliation Act of 2001 or is comprised of a master or prototype plan that has received a favorable opinion letter from the Internal Revenue Service; no Reportable Event has occurred; no Multiemployer Plan is insolvent or in reorganization; no Plan has an Unfunded Current Liability; no Plan which is subject to Section 412 of the Code or Section 302 of ERISA has an accumulated funding deficiency, within the meaning of such sections of the Code or ERISA, or has applied for or received a waiver of an accumulated funding deficiency or an extension of any amortization period, within the meaning of Section 412 of the Code or Section 303 or 304 of ERISA; all contributions required to be made with respect to a Plan and Multiemployer Plan each have been timely made; neither the Borrower, any of its Subsidiaries nor any ERISA Affiliate has incurred any material liability (including any indirect, contingent or secondary liability) to or on account of a Plan pursuant to Section 409, 502(i), 502(l), 4062, 4063, 4064 or 4069 of ERISA or Section 401(a)(29), 4971 or 4975 of the Code, or to or on account of a Multiemployer Plan pursuant to Section 515, 4201, 4204 or 4212 of ERISA or expects to incur any such liability under any of the foregoing sections with respect to any Plan or Multiemployer Plan; no condition exists which presents a risk to the Borrower, any of its Subsidiaries or any ERISA Affiliate of incurring a liability to or on account of a Plan or Multiemployer Plan pursuant to the foregoing provisions of ERISA and the Code; no proceedings have been instituted to terminate or appoint a trustee to administer any Plan which is subject to Title IV of ERISA; no action, suit, proceeding, hearing, audit or investigation with respect to the administration, operation or the investment of assets of any Plan (other than routine claims and appeals for benefits) is pending, expected or to Borrower's knowledge, threatened; each group health plan (as defined in Section 607(1) of ERISA or Section 4980B(g)(2) of the Code) which covers or has covered employees or former employees of the Borrower, any of its Subsidiaries, or any ERISA Affiliate has at all times been operated in compliance with the provisions of Part 6 of subtitle B of Title I of ERISA and Section 4980B of the Code; no lien imposed under the Code or ERISA on the assets of the Borrower, any of its Subsidiaries or any ERISA Affiliate exists or is likely to arise on account of any Plan or Multiemployer Plan, and the Borrower and its Subsidiaries may cease contributions to or terminate any Plan maintained by any of them without incurring any liability (other than ordinary administrative termination costs that are immaterial in nature).

(b) Each Foreign Pension Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities. All contributions required to be made with respect to a Foreign Pension Plan have been timely made. Neither the Borrower nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Pension Plan, determined as of the end of the Borrower's most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Foreign Pension Plan allocable to such benefit liabilities.

6.11. Security Documents. (a) The provisions of the Guaranty and Collateral Agreement are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest in all right, title and interest of the Credit Parties in the Collateral described therein, and the Collateral Agent, for the benefit of the Secured Creditors, has (or upon filing of UCC financing statements and other approved filings or taking of possession or control will have) a fully perfected security interest in all right, title and interest in all of the Collateral described therein, subject to no other Liens other than Permitted Liens. The recordation of (i) the Grant of Security

Interest in U.S. Patents and (ii) the Grant of Security Interest in U.S. Trademarks in the respective form attached to the Guaranty and Collateral Agreement, in each case in the United States Patent and Trademark Office, together with filings on Form UCC-1 made pursuant to the Guaranty and Collateral Agreement, will create, to the extent as may be perfected by such filings and recordation, a perfected security interest in the United States trademarks and patents covered by the Guaranty and Collateral Agreement, and the recordation of the Grant of Security Interest in U.S. Copyrights in the form attached to the Guaranty and Collateral Agreement with the United States Copyright Office, together with filings on Form UCC-1 made pursuant to the Guaranty and Collateral Agreement, will create, to the extent as may be perfected by such filings and recordation, a perfected security interest in the United States copyrights covered by the Guaranty and Collateral Agreement. Prior to the Discharge Conditions being met, the representations made in this [Section 6.11\(a\)](#) to deliver any Collateral to the Collateral Agent for purposes of perfection by possession or control shall be deemed satisfied by the delivery of such Collateral to the First-Lien Collateral Agent.

(b) Upon the execution and delivery thereof, each Mortgage, if any, will create, as security for the obligations purported to be secured thereby, a valid and enforceable perfected security interest in and mortgage lien on the respective Mortgaged Property in favor of the Collateral Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Creditors, superior and prior to the rights of all third Persons (except that the security interest and mortgage lien created on such Mortgaged Property may be subject to the Permitted Encumbrances related thereto) and subject to no other Liens (other than Permitted Encumbrances related thereto).

6.12. **Properties.** On and as of the Closing Date, neither the Borrower nor any of its Restricted Subsidiaries owns any Real Property. All Real Property leased by the Borrower or any of its Restricted Subsidiaries as of the Closing Date, and the nature of the interest therein, is set forth in Schedule 6.12. Each of the Borrower and its Restricted Subsidiaries has a valid and defensible leasehold interest in the Real Property leased by it free and clear of all Liens other than Permitted Liens.

6.13. **Capitalization and Warrants.** On and as of the Closing Date, the authorized and issued capital stock of the Borrower consists of shares of common stock and preferred stock as set forth in Schedule 6.13(a). Except as set forth in Schedule 6.13(a), all such outstanding shares have been duly and validly issued, are fully paid and non-assessable and have been issued free of preemptive rights. As of the Closing Date except as set forth on Schedule 6.13(a), (i) except for the Warrants and warrants issued in connection with the First-Lien Credit Agreement, the Borrower does not have outstanding any capital stock or other securities convertible into or exchangeable for its capital stock or any rights to subscribe for or to purchase, or any options for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its capital stock or any stock appreciation or similar rights and (ii) after giving effect to the Transactions, none of the Credit Parties will be subject to any obligation (contingent or otherwise) to repurchase, acquire or retire (x) any of its Equity Interests, or (y) any securities convertible into or exchangeable for any of its Equity Interests.

(b) The Warrant Stock to be issued upon exercise of the Warrants has been duly and validly reserved for issuance upon such exercise and, when issued and delivered against payment therefore as provided therein, will be duly authorized, validly issued, fully paid and non-assessable and not subject to further assessment or charge by the Borrower and will be subject to no Liens created by or through the Borrower in respect of the issuance thereof.

6.14. Subsidiaries. On and as of the Closing Date, the Borrower has no Subsidiaries other than those Subsidiaries listed on Schedule 6.14. Schedule 6.14 sets forth, as of the Closing Date, the percentage ownership (direct and indirect) of the Borrower in each class of capital stock or other Equity Interests of each of its Subsidiaries and also identifies the direct owner thereof. All outstanding shares of Equity Interests of each Subsidiary of the Borrower have been duly and validly issued, are fully paid and non-assessable and have been issued free of preemptive rights. No Subsidiary of the Borrower has outstanding any securities convertible into or exchangeable for its Equity Interests or outstanding any right to subscribe for or to purchase, or any options or warrants for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of or any calls, commitments or claims of any character relating to, its Equity Interests or any appreciation or similar rights. On the Closing Date, 100% of the Equity Interests of each Subsidiary Guarantor are owned directly or indirectly by the Borrower.

6.15. Compliance with Statutes, etc. Each of the Borrower and each of its Restricted Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property (including, without limitation, applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such non-compliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.16. Investment Company Act. Neither the Borrower nor any of its Subsidiaries are an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

6.17. Environmental Matters. (a) The Borrower and each of its Subsidiaries are in compliance with all applicable Environmental Laws and the requirements of any permits issued under such Environmental Laws. There are no pending or, to the knowledge of the Borrower, threatened (in writing) Environmental Claims against the Borrower or any of its Subsidiaries or any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries (including any such claim arising out of the ownership, lease or operation by the Borrower or any of its Subsidiaries of any Real Property formerly owned, leased or operated by the Borrower or any of its Subsidiaries but no longer owned, leased or operated by the Borrower or any of its Subsidiaries). There are no facts, circumstances, conditions or occurrences with respect to the business or operations of the Borrower or any of its Subsidiaries, or any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries (including any Real Property formerly owned, leased or operated by the Borrower or any of its Subsidiaries but no longer owned, leased or operated by the Borrower or any of its Subsidiaries) or, to the knowledge of the Borrower, any property adjoining or adjacent to any such Real Property that would be reasonably expected (i) to form the basis of an Environmental Claim against the Borrower or any of its Subsidiaries or any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries or (ii) to cause any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries to be subject to any restrictions on the ownership, lease, occupancy or transferability of such Real Property by the Borrower or any of its Subsidiaries under any applicable Environmental Law.

(b) Hazardous Materials have not at any time been generated, used, treated or stored on, or transported to or from, or Released on or from, any Real Property owned, leased or operated by the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, any property adjoining or adjacent to any Real Property, where such generation, use, treatment, storage, transportation or Release has violated or would be reasonably expected to violate any applicable Environmental Law or give rise to an Environmental Claim.

(c) Notwithstanding anything to the contrary in this Section 6.17, the representations and warranties made in this Section 6.17 shall be untrue only if the effect of any or all conditions, violations, claims, restrictions, failures and noncompliances of the types described above would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.18. Employment and Labor Relations. Neither the Borrower nor any of its Subsidiaries are engaged in any unfair labor practice that would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, threatened against any of them, before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is so pending against the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, threatened against any of them, (b) no strike, labor dispute, slowdown or stoppage pending against the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower, threatened (in writing) against the Borrower or any of its Subsidiaries, (c) no union representation question exists with respect to the employees of the Borrower or any of its Subsidiaries, (d) no equal employment opportunity charges or other claims of employment discrimination are pending or, to the knowledge of the Borrower, threatened against the Borrower or any of its Subsidiaries, and (e) no wage and hour department investigation has been made of the Borrower or any of its Subsidiaries, except (with respect to any matter specified in clauses (a) (e) above, either individually or in the aggregate) such as would not reasonably be expected to have a Material Adverse Effect.

6.19. Intellectual Property, etc. (a) Schedule 6.19(a) identifies all of the (i) Internet Web sites, Internet domain names and URLs, (ii) trademark registrations and applications, (iii) material copyright registrations, and (iv) patents, and pending patent applications owned by any Credit Parties on and as of the Closing Date. On and as of the Closing Date, all of the patents and patent applications included in Schedule 6.19(a) and registrations and applications for registration of any other Intellectual Property included in Schedule 6.19(a) are recorded in the name of a Credit Party and, except as would not reasonably be expected to have a Material Adverse Effect, all such registrations are in full force and effect, valid and enforceable and all maintenance and renewal fees relating thereto have been duly and timely paid. Each of the Borrower and each of its Subsidiaries owns or has the right to use all the patents, trademarks, permits, domain names, service marks, trade names, copyrights, licenses, franchises, inventions, trade secrets, proprietary information and know-how of any type, whether or not written (including, but not limited to, rights in computer programs and databases) and formulas necessary for the present conduct of its business, without any known conflict with the rights of others, except where such conflict or the failure to own or have the right to use, as the case may be, would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(b) Except with respect to the required consents set forth in Schedule 6.19(b), the Credit Parties own (and after giving effect to the transactions contemplated by this Agreement, will continue to own) all right, title and interest in and to, or have the right to use (and after giving effect to the transactions contemplated by this Agreement, will continue to have the right to use) pursuant to a valid and enforceable written agreement, all Intellectual Property necessary to carry on the business of the Credit Parties as now conducted, free and clear of all Liens (except Liens created by the Security Documents in favor of the Collateral Agent and Permitted Liens), except where the failure to have any such right, title or interest would not reasonably be expected to have a Material Adverse Effect.

(c) Except as disclosed in Schedule 6.19(c), on and as of the Closing Date, to the knowledge of each Credit Party, no Person has challenged in writing the validity, enforceability, use or ownership of any of the Intellectual Property used or held for use in the business of the Credit Parties or the Credit Parties' rights to any of such Intellectual Property, except where such challenge would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(d) To the knowledge of each Credit Party, neither the use of any Intellectual Property used or held for use in the business of the Credit Parties, nor the conduct of the business carried on by any Credit Party, infringes, misappropriates or otherwise violates the intellectual property rights of any other Person in any manner that is material to any Credit Party, except where the infringement, misappropriation or other violation would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(e) To the knowledge of each Credit Party, no Person is infringing, misappropriating or otherwise violating any Credit Party's rights to any Intellectual Property other than such infringements, misappropriation or violations which would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(f) Each Credit Party has taken commercially reasonable measures to protect its material confidential Intellectual Property.

6.20. **Indebtedness.** The financial statements described in Section 6.05(a) and/or Schedule 6.20 set forth a list of all Indebtedness (including Contingent Obligations) of the Borrower and its Restricted Subsidiaries as of the Closing Date of a principal amount in excess of \$500,000 and which is to remain outstanding after giving effect to the Transaction (excluding the Obligations) in each case showing the aggregate principal amount thereof and the name of the respective borrower and any Credit Party or any of its Subsidiaries which directly or indirectly guarantees such debt.

6.21. **Insurance.** Schedule 6.21 sets forth a listing of all material insurance maintained by the Borrower and its Subsidiaries as of the Closing Date, with the amounts insured (and any deductibles) set forth therein.

6.22. **Material Contracts.** Schedule 6.22 sets forth a true and complete list, as of the Closing Date, of all Material Contracts of each Credit Party. The Credit Parties have furnished or made available to the Lenders or their representatives true and complete copies of such Material Contracts, with all amendments, modifications and supplements thereto to the Closing Date. As of the Closing Date, each of such Material Contracts is valid, subsisting and in full force and effect. No Credit Party is in breach or violation of any of the terms, conditions or provisions of any of such Material Contracts, except for such breaches and violations thereof as in the aggregate do not and would not reasonably be expected to have a Material Adverse Effect, and to the knowledge of such Credit Party no third party to any of such Material Contracts is in breach or violation of any of the terms, conditions or provisions thereof, except for such breaches and violations thereof as in the aggregate do not and would not reasonably be expected to have a Material Adverse Effect.

SECTION 7. **Affirmative Covenants.** The Borrower hereby covenants and agrees that on and after the Closing Date and until the Total Commitment has terminated and the Loans (together with interest thereon), Fees and all other Obligations (other than indemnities described in Section 11.13 which are not then due and payable) incurred hereunder and thereunder, are paid in full:

7.01. **Information Covenants.** The Borrower will furnish to each Lender:

(a) **Quarterly Financial Statements.** Within 45 days after the close of each of the first three quarterly accounting periods in each fiscal year of the Borrower, the consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of operations and cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period, and setting forth comparative figures for all such financial information for the corresponding quarterly accounting period in the prior fiscal year. All of the foregoing financial statements shall be certified by an Authorized Officer of the Borrower that they fairly present in all material respects in accordance with GAAP the consolidated financial condition of the Borrower and its consolidated Subsidiaries as of the dates indicated and the consolidated results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of notes.

(b) **Annual Financial Statements.** Within 90 days after the close of each fiscal year of the Borrower (i) the consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of operations and cash flows and stockholders equity for such fiscal year setting forth, (x) comparable figures for such fiscal year as set forth in the respective budget delivered pursuant to Section 7.01(d) and (y) comparative figures for the preceding fiscal year, and the annual financial statements referenced above shall be certified by independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, accompanied by an opinion of such accounting firm stating that the audit was conducted in accordance with generally accepted auditing standards and (ii) management's discussion and analysis of the important operational and financial developments during such fiscal year.

(c) **Management Letters.** Promptly after the Borrower's or any of its Subsidiaries' receipt thereof, a copy of any management letter received from its certified public accountants and management's response thereto.

(d) **Budgets.** Within 90 days after the close of each fiscal year of the Borrower, a detailed consolidated quarterly budget and quarterly projections for the upcoming fiscal year in form reasonably satisfactory to the Administrative Agent, and the principal assumptions upon which such budget and projections are based.

(e) **Officers' Certificates.** At the time of the delivery of the financial statements provided for in Sections 7.01(a) and (b), a compliance certificate from the chief financial officer of the Borrower in the form of Exhibit H (each, a **Compliance Certificate**) certifying on behalf of the Borrower that, to such officer's knowledge after due inquiry, no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof, which certificate shall if delivered with the financial statements required by Section 7.01(b), set forth in reasonable detail the amount of (and the calculations required to establish the amount of) Excess Cash Flow for the respective Excess Cash Flow Payment Period and the amount of any