

EXHIBIT A

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of [], 2009

among

~~THE STAR TRIBUNE COMPANY~~ [NEW OPCO LLC],
as Borrower,

CREDIT SUISSE,
as Administrative Agent and Collateral Agent,

and

The Other Lenders Parties Hereto

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AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (this “**Agreement**”) is entered into as of [], 2009, among ~~THE STAR TRIBUNE COMPANY~~[NEW OPCO LLC], a Delaware ~~corporation~~limited liability company (the “**Borrower**”), as borrower, each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”), and CREDIT SUISSE, CAYMAN ISLANDS BRANCH (“**Credit Suisse**”), as Administrative Agent and Collateral Agent.

WHEREAS, ~~the Borrower~~The Star Tribune Company, a Delaware corporation (“Old Star Tribune”), the lenders party thereto, Credit Suisse, as administrative agent, swing line lender, letter of credit issuer and collateral agent, and RBS Securities Corporation, as syndication agent, are parties to a First Lien Senior Secured Credit Agreement dated as of March 5, 2007 (the “**Existing Credit Agreement**”);

WHEREAS, the Borrower is a successor by merger to Old Star Tribune;
and

WHEREAS, the parties hereto wish to amend and restate the Existing Credit Agreement as provided herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings set forth below:

“**Acquired EBITDA**” means, with respect to any Acquired Entity, for any period, the amount for such period of Consolidated EBITDA of such Acquired Entity (determined using such definitions as if references to the Borrower and its Subsidiaries therein were to such Acquired Entity and its Subsidiaries), all as determined on a consolidated basis for such Acquired Entity in accordance with GAAP.

“**Acquired Entity**” has the meaning provided in the definition of the term “Consolidated EBITDA”.

“**Administrative Agent**” means Credit Suisse in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“**Administrative Agent’s Office**” means the Administrative Agent’s address and, as appropriate, the account maintained by the Administrative Agent with Credit Suisse as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in substantially the form of Exhibit G hereto.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Agents**” means, collectively, the Administrative Agent and the Collateral Agent.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Aggregate Credit Exposures**” means, at any time, the sum of (a) the unused portion of each Commitment then in effect and (b) the Total Outstandings at such time.

“**Agreement**” has the meaning specified in the introductory paragraph hereto.

“**Applicable Margin**” means 3.0%.

“**Applicable Percentage**” means, with respect to any Lender at any time, the percentage of the Aggregate Credit Exposures represented by such Lender’s Commitment and Loans under the applicable Facility or Facilities at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“**Appropriate Lender**” means, at any time, with respect to the Tranche A Facility or the Tranche B Facility, a Lender that has a Commitment or outstanding Loan with respect to such Facility at such time.

“**Approved Fund**” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by —Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit C or any other form approved by the Administrative Agent.

“Authorized Officer” means, with respect to any Person, the chief executive officer, chief financial officer, senior vice president of finance, controller or treasurer of such Person.

“Bankruptcy Code” means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified at 11 U.S.C. Section 101 et seq.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the cases commenced on January 15, 2009 in respect of [Old Star Tribune](#) Holdings and its affiliated debtors under Chapter 11 of the Bankruptcy Code.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrowing” means a borrowing consisting of simultaneous Term Loans, having the same Interest Period made (or deemed to be made) by each of the Term Lenders pursuant to —Section 2.01.

“Business Day” means a day of the year on which banks are not required or authorized by law to close in New York, New York and, if the applicable Business Day relates to any Eurodollar Rate Loans, on which dealings in Dollars are carried on in the London interbank market.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations). For purposes of this definition, (a) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in or sale of similar equipment or with insurance proceeds therefrom shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time or the proceeds of such sale or the amount of such insurance proceeds, as the case may be, and (b) the term “Capital Expenditures” shall not include any expenditures to the extent such Person or its

Subsidiaries are reimbursed in cash by a third party (other than a Loan Party or any Subsidiary of a Loan Party) during the same period in which such expenditure was made.

“**Capitalized Leases**” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“**Cases**” means the voluntary petitions for relief filed by [Old Star Tribune Holdings](#) and its affiliated debtors with the Bankruptcy Court pursuant to chapter 11 of the Bankruptcy Code.

“**Cash Collateral Account**” means an interest bearing deposit account to be maintained at a commercial bank selected in compliance with ~~—~~Section 6.17 in the name of the Collateral Agent and under the sole dominion and control of the Collateral Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“**Cash Equivalents**” means any of the following types of Investments:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than one year from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(b) time deposits with, or certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is a Lender or (ii) (A) is a commercial banking institution (including US branches of foreign banking institutions) that is a member of the Federal Reserve System, and (B) has combined capital and surplus of at least \$500,000,000, in each case with maturities of not more than one year from the date of acquisition thereof;

(c) commercial paper which is rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than 270 days from the date of acquisition thereof;

(d) short-term, tax-exempt securities rated not lower than MIG-1 or SP-1+ by Moody’s or S&P, respectively, with provisions for liquidity or maturity accommodations of 183 days or less;

(e) repurchase agreements which (i) are entered into with any entity referred to in clause (b) or (c) above or any other financial institution whose unsecured long-term debt (or the unsecured long-term debt of whose holding company) is rated at least A- or better by S&P or A3 or better by Moody’s and maturing not more than one year after such time and (ii) are

secured by a fully perfected security interest in securities of the type referred to in clause (a) above that have a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(f) any money market or similar fund not less than 95% of the assets of which are comprised of any of the items specified in clauses (a) through (e) above and as to which withdrawals are permitted at least every 90 days; or

(g) in the case of any Subsidiary of [HoldingsNew TopCo](#) organized or having its principal place of business outside the United States, investments denominated in the currency of the jurisdiction in which such Subsidiary is organized or has its principal place of business which are similar to the items specified in clauses (a) through (f) above.

“**Cash Interest**” has the meaning specified in —Section 2.08.

“**Cash Interest Election Notice**” has the meaning specified in —Section 2.08.

“**CFC**” means a controlled foreign corporation as defined in Section 957(a) of the Code.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“**Change of Control**” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Holders becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire (such right, an “**option right**”), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the equity securities of [HoldingsNew](#)

TopCo entitled to vote for members of the board of directors or equivalent governing body of such Person on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(b) a majority of the seats (other than vacant seats) on the board of directors of ~~Holdings~~New TopCo shall at any time be occupied by persons who are not Continuing Directors; or

(c) ~~Holdings~~New TopCo shall cease, directly or indirectly, to own and control legally and beneficially all of the Equity Interests in the Borrower (other than directors' qualifying shares in nominal amounts that are required by law to be held by directors of the Borrower); or

(d) a "change of control" or any comparable event shall have occurred under, and as defined in any agreement evidencing Indebtedness (other than any Indebtedness permitted under Section 7.02(c)(v)) of any Loan Party or any Subsidiary of any Loan Party in excess of the Threshold Amount.

"Class" means, with respect to any Loan, its character as a Tranche A Term Loan or a Tranche B Term Loan.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all of the "Collateral" and "Mortgaged Property" referred to in the Collateral Documents and all of the other property and assets that are or are intended under the terms of the Collateral Documents to be subject to Liens in favor of the Collateral Agent for the benefit of the Secured Parties.

"Collateral Agent" means Credit Suisse, in its capacity as collateral agent under any of the Loan Documents, or any successor collateral agent.

"Collateral Documents" means, collectively, the Security Agreement, the Intellectual Property Security Agreement, the Mortgages (if any), each of the mortgages, collateral assignments, Security Agreement Supplements, IP Security Agreement Supplements, security agreements, pledge agreements or other similar agreements delivered to the Collateral Agent pursuant to Sections ~~—6.12, —6.13~~ or 6.18, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

"Commitment" means a Tranche A Commitment, or a Tranche B Commitment, as the context may require.

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit B.

“**Consolidated Earnings**” means, for any period, consolidated net income (or loss) of the Borrower and its Subsidiaries for such period, excluding (a) extraordinary items for such period, and (b) the cumulative effect of a change in accounting principles during such period.

“**Consolidated EBITDA**” means, for any period, (a) the sum, without duplication, of the amounts for such period of: (i) Consolidated Earnings plus (ii) to the extent deducted in arriving at such Consolidated Earnings, the following: (A) interest expense, (B) depreciation expense, (C) amortization expense, (D) extraordinary losses and unusual or non-recurring losses and charges (including severance, relocation costs and one-time compensation charges), (E) non-cash charges (including non-cash charges related to stock compensation expense) (*provided* that if any such non cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA in such future period to such extent), (F) losses on asset sales, (G) restructuring charges or reserves (including costs related to acquisitions after the date hereof and to closure/consolidation of facilities), (H) in the case of any period that includes a period ending prior to or during the fiscal year ending closest to December 27, 2009, fees or expenses incurred or paid by [Old Star Tribune Holdings](#), [New TopCo](#) or any of ~~its~~[their respective](#) Subsidiaries in connection with the Transaction [or the Restructuring Transactions](#), (I) any expenses or charges incurred in connection with any issuance (or proposed issuance) of debt or equity or any refinancing transaction (or proposed refinancing transaction) or any amendment or other modification (or proposed amendment or modification) of any debt instrument, (J) any fees and expenses related to Permitted Acquisitions (or proposed Permitted Acquisitions), (K) any impairment charge or asset write-off pursuant to Financial Accounting Standards Board Statement No. 142 or No. 144 and any amortization of intangibles arising pursuant to such Statement No. 141, (L) foreign withholding taxes paid or accrued in such period, (M) expenses consisting of internal software development costs that are expensed during the period but could have been capitalized under alternative accounting policies in accordance with GAAP, (N) loss from the early extinguishment of Indebtedness or hedging obligations or other derivative instruments, (O) any deductions attributable to minority interests, (P) costs of surety bonds incurred in connection with financing activities, (Q) consolidated income tax expense, (R) mark-to-market losses recognized pursuant to Financial Accounting Standards Board Statement No. 133 or any successor thereof, (S) payments made in respect of Earn-Outs and (T) expenses incurred with respect to the Chapter 11 reorganization as set forth on the Borrower’s consolidated statement of income for such period, including (1) professional and other fees, (2) key employee retention program payments, (3) financing fees, (4) severance costs and (5) any litigation expenses incurred during or in connection with the Cases;

minus, (b) to the extent included in such Consolidated Earnings, the following: (i) extraordinary gains and non-recurring gains, (ii) non-cash gains (excluding any such non cash gain to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period) (also, for the avoidance of doubt, non-cash income and/or gains resulting from the amortization of deferred incentives and credits from upfront payments received in a prior period shall be excluded), (iii) gains on asset sales, (iv) any net after-tax income from the early extinguishment of Indebtedness or hedging obligations or other derivative instruments, (v) mark-to-market gains recognized pursuant to Financial Accounting Standards Board Statement No. 133 or any successor thereof, in each case, as determined on a consolidated basis for the Borrower and its Subsidiaries in accordance with GAAP, and (vi) interest income, *provided* that: (1) there shall be excluded in determining Consolidated EBITDA non-operating currency transaction gains and losses (including the net loss or gain resulting from Swap Contracts for currency exchange risk), (2) there shall be included in determining Consolidated EBITDA for any period (I) the Acquired EBITDA of any Person, property, business or asset acquired to the extent not subsequently sold, transferred or otherwise disposed of (but not including the Acquired EBITDA of any related Person, property, business or assets to the extent not so acquired) by the Borrower or any of the Subsidiaries after the beginning of such period and on or prior to the date of such determination (each such Person, property, business or asset acquired and not subsequently so disposed of, an “**Acquired Entity**”), based on the actual Acquired EBITDA of such Acquired Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) and (II) an adjustment in respect of each Acquired Entity equal to the amount of the Pro Forma Adjustment with respect to such Acquired Entity for such period (including the portion thereof occurring prior to such acquisition or conversion) as specified in the Compliance Certificate delivered to the Lenders and the Administrative Agent, (3) for purposes of determining the Consolidated Fixed Charge Coverage Ratio only, there shall be excluded in determining Consolidated EBITDA for any period the Disposed EBITDA of any Person, property, business or asset sold, transferred or otherwise disposed of by the Borrower or any Subsidiary after the beginning of such period and on or prior to the date of such determination (each such Person, property, business or asset so sold or disposed of, a “**Sold Entity**”) based on the actual Disposed EBITDA of such Sold Entity for such period (including the portion thereof occurring prior to such sale, transfer, disposition or conversion), (4) there shall be excluded from Consolidated Earnings and the determination of Consolidated EBITDA for any period the effects of adjustments in component amounts required or permitted by the Financial Accounting Standards Board Statements Nos. 141 and 142 and related authoritative pronouncements, as a result of the Transactions, any acquisition consummated prior to the Effective Date or Permitted Acquisitions or the amortization or write-off of any amounts in connection with any thereof and related financings of any thereof and (5) there shall be excluded in determining Consolidated EBITDA for any period any charges or

gains arising from Fresh Start Reporting adjustments that do not impact the cash flows of the Borrower and its Subsidiaries to the extent included in the calculation of consolidated net income of the Borrower and its Subsidiaries for such period in accordance with GAAP.

“Consolidated Fixed Charges” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the sum, without duplication, of (a) all interest (excluding PIK interest), premium payments, debt discount, fees, charges and related expenses of the Borrower and its Subsidiaries in connection with borrowed money or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) the portion of rent expense of the Borrower and its Subsidiaries with respect to such period under Capitalized Leases that is treated as interest in accordance with GAAP, (c) all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs in respect of Swap Contracts constituting interest rate swaps, collars, caps or other arrangements requiring payments contingent upon interest rates of the Borrower and its Subsidiaries, in each case to the extent payable in cash on a current basis and excluding up front fees and expenses and the amortization of deferred financing costs, (d) scheduled payments of principal on Indebtedness of the Borrower and its Subsidiaries determined in accordance with GAAP (including, without limitation, scheduled principal payments with respect to Capitalized Leases) and (e) the portion of taxes based on income actually paid in cash during such period; *provided* that, for purposes of calculating Consolidated Fixed Charges for any period, such calculation shall be made on a pro forma basis as if any acquisition of any Acquired Entity or any sale or disposition of any Sold Entity acquired, sold or disposed of, as the case may be, after the first day of such period and on or prior to the date of determination, and any incurrence or repayment or prepayment of Indebtedness made in connection with such acquisition, sale or disposition, had been consummated on the first day of such period.

“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDA *minus* the unfinanced portion of Capital Expenditures to (b) Consolidated Fixed Charges (net of interest income and excluding any mark-to-market gains or losses that must be recognized currently in computing interest expense under Financial Accounting Standards Board Statement No. 133), in each case, of the Borrower and its Subsidiaries for the period of four fiscal quarters then most recently ended; *provided* that, in the event that the Consolidated Fixed Charge Coverage Ratio is calculated on a pro forma basis on any date other than the last day of a fiscal quarter of the Borrower, such Consolidated Fixed Charge Coverage Ratio shall be calculated for the period of the four fiscal quarters most recently ended for the fiscal quarter or fiscal year, as applicable, for which the most recent financial statements shall have been delivered to the Administrative Agent pursuant to Sections 4.01(a)(x), 6.01(a) or 6.01(b), as applicable.

“**Continuing Director**” means, at any time, any member of the board of directors of [HoldingsNew TopCo](#) who (a) was a member of such board of directors on the Effective Date or (b) was nominated for election or elected to such board of directors with the approval of a majority of the Continuing Directors who were members of such board of directors at the time of such nomination or election.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Credit Suisse**” has the meaning specified in the introductory paragraph hereto.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means the rate otherwise applicable to Loans plus 2.0% per annum.

“**Defaulting Lender**” means any Lender that (a) has failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, or (b) has been deemed insolvent or has become the subject of a bankruptcy or insolvency proceeding.

“**Disposition**” or “**Dispose**” means the sale, transfer or other disposition of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any Equity Interests owned by such Person, or any notes or accounts receivable or any rights and claims associated therewith.

“**Dollar**” and “**\$**” mean lawful money of the United States.

“**Domestic Subsidiary**” has the meaning specified in —Section 6.12.

“**Downtown Campus Property**” means the property owned by the Borrower described in ~~Part A of~~ Schedule 4.01(a)(iv).

“**Earn-Outs**” means any obligations of the Borrower or any Subsidiary to pay any amounts constituting the payment of deferred purchase price with respect to any acquisition of a business (whether through the purchase of assets or Equity Interests), the amount of which payments is calculated on the basis of, or by reference to, the bona fide financial or other operating performance of such business or a specified portion thereof or any other similar arrangements.

“**Effective Date**” means the date on which the conditions specified in —Section 4.01 are satisfied (or waived in accordance with —Section 10.01).

“**Eligible Assignee**” means, with respect to any Facility, an assignee to which an assignment thereunder is permitted under —Section 10.06(b) (and as to which any consents required thereunder have been obtained).

“**Environmental Laws**” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, obligations contained in or required by permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment and natural resources or the release into the environment of, or exposure to, any pollutants, wastes or other toxic or hazardous materials, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Environmental Permit**” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“**Equity Interests**” means, with respect to any Person, all shares of capital stock of (or other ownership or profit interests in) such Person, all warrants, options or other rights to purchase or acquire from such Person shares of capital stock of (or

other ownership or profit interests in) (in each case whether or not such shares of capital stock are then outstanding) such Person, all securities of such Person convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options to purchase or acquire from such Person such shares (or such other interests), and all other ownership or profit interests in such Person (including, without limitation, partnership, member or trust interests therein), in each case whether voting or nonvoting.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate a Pension Plan or Multiemployer Plan, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; (g) the failure of any Loan Party or any ERISA Affiliate to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; (h) the application for a minimum funding waiver with respect to a Pension Plan or (i) any other event or condition with respect to a Pension Plan or Multiemployer Plan with respect to which any Loan Party incurs liability other than in the ordinary course; *provided, however*, that no event or condition listed in (a)-(i) above shall be an ERISA Event if all of the liability to which it relates was incurred prior to the Effective Date.

“**Eurocurrency Liabilities**” has the meaning specified in Regulation D of the FRB, as in effect from time to time.

“**Eurodollar Rate**” means for any Interest Period with respect to any Eurodollar Rate Loan, a rate per annum equal to the greater of (a) 5.0% and (b) the rate determined by the Administrative Agent pursuant to the following formula:

$$\text{Eurodollar Rate} = \frac{\text{LIBO Rate}}{1.00 - \text{Eurodollar Rate Reserve Percentage}}$$

Where,

“**LIBO Rate**” means, for such Interest Period, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m., London time, on the date that is two Business Days prior to the commencement of such Interest Period by reference to the British Bankers’ Association Interest Settlement Rates for deposits in Dollars (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Administrative Agent which has been nominated by the British Bankers’ Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; *provided* that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “**LIBO Rate**” shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period.

“**Eurodollar Rate Loan**” means a Loan that bears interest at the Eurodollar Rate.

“**Eurodollar Rate Reserve Percentage**” for any Interest Period for each Eurodollar Rate Loan means the reserve percentage applicable two Business Days before the first day of such Interest Period under regulations issued from time to time by the FRB (or any successor) for determining the maximum reserve requirement (including, without limitation, any emergency, supplemental or other marginal reserve requirement) for a member bank of the Federal Reserve System in New York City with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (or with respect to any other category of liabilities that includes deposits by reference to which the interest rate on Eurodollar Rate Loans is determined) having a term equal to such Interest Period.

“**Event of Default**” has the meaning specified in —Section 8.01.

“**Excluded Taxes**” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any

obligation of the Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located, (c) net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed by reason of any present or former connection between the Administrative Agent or any Lender (as the case may be) and the jurisdiction imposing such taxes, other than any such connection arising solely as a result of the Administrative Agent or any Lender having executed, delivered or performed its obligations or received payment under or enforced this Agreement or any Note or any transaction contemplated hereby and (d) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under —Section 10.06(k)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with —Section 3.01(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to —Section 3.01(a).

“**Existing Credit Agreement**” has the meaning set forth in the first recital hereto.

“**Existing Indebtedness**” means Indebtedness of each Loan Party and its Subsidiaries outstanding immediately before the occurrence of the Effective Date, either as described in Part (a) of Schedule 5.05 or, to the extent not so described, in an aggregate principal amount not to exceed \$1,000,000.

“**Existing Letter of Credit**” means any letter of credit issued under the Existing Credit Agreement and outstanding as of the Effective Date, each of which is set forth on Schedule 1.01-A.

“**Extraordinary Receipt**” means any cash received by or paid to or for the account of any Loan Party not in the ordinary course of business, including, without limitation, any refund of income taxes, purchase price adjustments, judgments and litigation settlements, pension plan reversions, proceeds of insurance (excluding proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof) and indemnity payments; *provided, however*, that an Extraordinary Receipt shall not include cash receipts from proceeds of insurance, condemnation awards (or payments in lieu thereof) or indemnity payments to the extent that such proceeds, awards or payments are received by any Loan Party in respect of any

third party claim against such Loan Party and applied to pay (or to reimburse such Loan Party for its prior payment of) such claim and the costs and expenses of such Loan Party with respect thereto.

“**Facility**” means the Tranche A Facility or the Tranche B Facility, as the context may require.

“**Federal Funds Rate**” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**Fee Letter**” means the letter agreement, dated as of the Effective Date, between Credit Suisse and the Borrower.

“**Foreign Lender**” means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“**Foreign Subsidiary**” means any Subsidiary that is not a Domestic Subsidiary.

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States.

“**Fresh Start Reporting**” means the preparation of consolidated financial statements of the Borrower in accordance with American Institute of Certified Public Accountants Statement of Position (90-7), which reflects the consummation of the transactions contemplated by the Reorganization Plan on a presumed effective date of September 28, 2009.

“**Fund**” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“**GAAP**” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting

profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“**Governmental Authority**” means the government of the United States or any other nation, or of any political subdivision thereof, whether state 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 (including any supra-national bodies such as the European Union or the European Central Bank).

“**Granting Lender**” has the meaning specified in —Section 10.06(i).

“**Guarantee**” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness payable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment of such Indebtedness, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of any other Person, whether or not such Indebtedness is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee at any time shall be deemed to be an amount then equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made (or, if such Guarantee is limited by its terms to a lesser amount, such lesser amount) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith; *provided* that, in the case of any Guarantee of the type set forth in clause (b) above, if recourse to such Person for such Indebtedness is limited to the assets subject to such Lien, then such Guarantee shall be a Guarantee hereunder solely to the extent of the lesser of (x) the amount of the Indebtedness secured by such Lien and (y) the value of the assets subject to such Lien. The term “**Guarantee**” as a verb has a corresponding meaning.

“**Guaranties**” means the ~~Holdings~~[Holding Company](#) Guaranty and the Subsidiary Guaranty.

“**Guarantors**” means, collectively, ~~Holdings~~the Holding Companies and the Subsidiary Guarantors.

“**Hazardous Materials**” means all radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, toxic mold, polychlorinated biphenyls, radon gas, hazardous wastes and all other substances, wastes and materials that are deemed to be, or are classified, listed or regulated as, hazardous or toxic under applicable Environmental Law.

“**Hedge Bank**” means any Person that is the Administrative Agent or a Lender or an Affiliate of any of the foregoing (or was the Administrative Agent, a Lender or an Affiliate of any of the foregoing at the time it entered into a Secured Hedge Agreement), in its capacity as a party to a Secured Hedge Agreement.

~~“**Holdings**” means Star Tribune Holdings Corporation, a Delaware Corporation.~~

“**Holding Company**” means each of New TopCo, New Holdings I and New Holdings II.

“~~Holdings~~**Holding Company Guaranty**” means the ~~Amended and Restated Holdings~~Holding Company Guaranty made by ~~Holdings~~the Holding Companies in favor of the Administrative Agent on behalf of the Lenders, substantially in the form of Exhibit D-1.

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person on a marked-to-market basis under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable, other accrued expenses and deferred compensation incurred in the ordinary course of business and (ii) Earn-Outs);

(e) Indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or acquired by such Person (including Indebtedness arising under conditional sales or other title retention agreements); *provided* that if such Indebtedness shall not have been assumed by such Person and is otherwise non-recourse to such Person, the amount of such obligation treated as Indebtedness shall not exceed the value of such property securing such obligations.

(f) Capitalized Leases;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment (other than any payment made solely with common Equity Interests or Specified Equity Interests of such Person) in respect of any Equity Interests in such Person or any other Person or any warrants, rights or options to acquire such Equity Interests, but excluding obligations in respect of Specified Equity Interests of such Person, valued, in the case of redeemable preferred interests, at its liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent that such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“**Indemnified Costs**” has the meaning specified in —Section 9.05(a).

“**Indemnified Taxes**” means Taxes other than Excluded Taxes.

“**Indemnitee**” has the meaning specified in —Section 10.04(b).

“**Information**” has the meaning specified in —Section 10.07.

“**Intellectual Property Security Agreement**” means an intellectual property security agreement, substantially in the form of Exhibit C to the Security Agreement, together with each other intellectual property security agreement and IP Security Agreement Supplement delivered pursuant to Section 6.18(b), in each case as amended, restated, supplemented or otherwise modified from time to time.

“Interest Payment Date” means, as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Scheduled Maturity Date.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed (or deemed to be disbursed) or continued as a Eurodollar Rate Loan and ending on the date that is three months thereafter; *provided* that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Scheduled Maturity Date; *provided further* that the initial Interest Period in respect of any Borrowing made or deemed to be made on the Effective Date shall commence on the Effective Date and shall end on December 31, 2009.

“Inventory” has the meaning specified in Section 1(b) of the Security Agreement.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor incurs debt of the type referred to in clause (h) of the definition of “Indebtedness” set forth in this —Section 1.01 in respect of such Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit of, or all of a substantial part of the business being conducted by, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IP Rights” has the meaning specified in Section 5.13.

“**IP Security Agreement Supplement**” has the meaning specified in Section 1(g)(vi) of the Security Agreement.

“**IRS**” means the United States Internal Revenue Service.

“**ISDA Master Agreement**” means the Master Agreement (Multicurrency-Cross Border) published by the International Swap and Derivatives Association, Inc., as in effect from time to time.

“**ISP**” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, any Governmental Authority, in each case whether or not having the force of law.

“**L/C Issuer**” means Credit Suisse in its capacity as issuer of the Existing Letters of Credit.

“**Lender**” has the meaning specified in the introductory paragraph hereto.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“**Lien**” means any mortgage, deed of trust, deed to secure debt, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other) or charge or preference or priority over assets or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“**Loan**” means an extension of credit made (or deemed to be made) by a Lender to the Borrower under Article II in the form of a Tranche A Term Loan or a Tranche B Term Loan.

“**Loan Documents**” means, collectively, (a) for purposes of this Agreement and the Notes, if any, and any amendment, restatement, supplement or other modification hereof or thereof and for all other purposes other than for purposes of the Guaranties and the Collateral Documents, (i) this Agreement, (ii) the Notes (if any), (iii) the Guaranties and (iv) the Collateral Documents and (b) for purposes of the Guaranties and the Collateral Documents, (i) this Agreement, (ii) the Notes (if any), (iii) the Guaranties, (iv) the Collateral Documents and (v) each Secured Hedge Agreement.

“**Loan Parties**” means, collectively, the Borrower and each Guarantor.

“**Material Adverse Effect**” means (a) a material adverse effect on the business, operations or financial condition of the Borrower and its Subsidiaries taken as a whole or [Holdings²New TopCo](#), the Borrower and [Holdings²New TopCo's](#) Subsidiaries taken as a whole, or (b) a material impairment of the rights and remedies of any Agent or any Lender under any Loan Document, or of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party.

“**Maturity Date**” means the earlier of (i) the fifth anniversary of the Effective Date (the “**Scheduled Maturity Date**”) and (ii) the date of the acceleration of the Loans pursuant to —Section 8.02.

“**Maximum Rate**” has the meaning specified in —Section 10.09.

“**Moody²s**” means Moody²s Investors Service, Inc. and any successor thereto.

“**Mortgage**” means a mortgage, deed of trust, deed to secure debt or similar document encumbering real property and fixtures of any Loan Party and securing Obligations of one or more Loan Parties under the Loan Documents.

“**Mortgage Policies**” has the meaning specified in —Section 6.13(a)(ii).

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Net Cash Proceeds**” means:

(a) with respect to any Disposition or sale lease-back transaction by any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way

of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount, premium or penalty, if any, interest and other amounts payable in respect of any Indebtedness that is secured by the applicable asset and that is, or is required to be, repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable out-of-pocket fees and expenses incurred by any Loan Party or such Subsidiary in connection with such transaction, (C) taxes reasonably estimated to be actually payable (including, in the case of any Disposition in respect of property of any Foreign Subsidiary, taxes payable upon the repatriation of such proceeds to the U.S.) in connection therewith, (D) amounts provided as a reserve against any liabilities under any indemnification obligations or purchase price adjustment associated with such Disposition or transaction (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), (E) any liabilities relating to the property subject to such Disposition or transaction that are retained by any Loan Party and (F) in the case of the Disposition of the real property described in Section 7.05(l), relocation costs relating to such Disposition, including costs and expenses associated with obtaining a replacement facility;

(b) with respect to the sale or issuance of any Equity Interest by any Loan Party or any of its Subsidiaries, or the incurrence or issuance of any Indebtedness by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) all taxes (including in the case of any Indebtedness incurred or issued by, or any Equity Interest issued or sold by, any Foreign Subsidiary, taxes payable upon the repatriation of such proceeds to the U.S.), underwriting discounts and commissions, and other reasonable out-of-pocket fees and expenses, incurred by ~~Holdings, the Borrower or such Subsidiary~~ any Loan Party or any of its Subsidiaries in connection therewith; and

(c) with respect to any Extraordinary Receipt, the excess, if any, of (i) the amount of such Extraordinary Receipt over (ii) the sum of (A) the reasonable out-of-pocket fees and expenses incurred by any Loan Party in connection therewith, (B) taxes reasonably estimated to be actually payable in connection therewith; *provided* that, to the extent that any such proceeds reserved for estimated taxes are not actually so applied, such proceeds shall be applied towards the prepayment of the Loans in accordance with Section 2.05(b)(iv) and (C) in respect of any cash received from judgments or litigation settlements, the amount of compensatory damages awarded in such judgment or litigation settlement.

“**Non-Financial Entity**” has the meaning specified in —Section 10.06(b).

~~“Note” means a promissory note of the Borrower payable to the order of any Lender, in substantially the form of Exhibit A hereto, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Loans made (or deemed to be made) by such Lender.~~

“New Holdings I” means [New Holdings I], a Delaware corporation and a wholly-owned Subsidiary of New TopCo.

“New Holdings II” means [New Holdings II], a Delaware corporation and a wholly-owned Subsidiary of New Holdings I.

“New TopCo” means [New TopCo], a Delaware corporation.

“Note” means each of the Tranche A Notes and the Tranche B Notes.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation to pay principal, interest, charges, expenses, fees, attorneys’ fees and disbursements, indemnities and other amounts payable by any Loan Party under any Loan Document (including any Secured Hedge Agreement) and (b) the obligation of any Loan Party to reimburse any amount in respect of any obligation described in clause (a) that any Lender, in its sole discretion to the extent not expressly prohibited by the Loan Documents, may elect to pay or advance on behalf of such Loan Party.

“Old Star Tribune” has the meaning set forth in the first recital hereto.

“Old Star Tribune Holdings” means Star Tribune Holdings Corporation, a Delaware corporation.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its

formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Taxes**” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“**Outstanding Amount**” means, with respect to any Loan, the aggregate outstanding principal amount thereof after giving effect to any prepayments or repayments of Loans occurring on such date.

“**Patriot Act**” has the meaning set forth in —Section 10.14.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“**Permitted Acquisition**” means the purchase or other acquisition by the Borrower or any of its Subsidiaries of Equity Interests in, or all or substantially all of the property and assets of (or all or substantially all of the property and assets constituting a separate business unit of), any Person that, upon the consummation thereof, will be (a) wholly owned by the Borrower or one or more of its Subsidiaries (including, without limitation, as a result of a merger or consolidation or the purchase or other acquisition of all or a substantial portion of the property and assets of a Person), *provided* that, with respect to each such purchase or other acquisition, any such newly created or acquired Subsidiary shall be a Loan Party and comply with the requirements of Sections —6.12 and —6.13; (b) a Foreign Subsidiary, *provided* that the aggregate consideration paid in connection with Permitted Acquisitions of Foreign Subsidiaries shall not exceed \$2,500,000 during the term of this Agreement; or (c) a Person in which the Borrower or a Subsidiary maintains an equity investment, but which is not a Subsidiary of the Borrower, *provided* that the aggregate consideration paid in connection with Permitted Acquisitions referred to in this clause (c) shall not exceed \$3,000,000 during the term of this Agreement; *provided* that, in the case of any of clause (a), (b) or (c) of this definition, (i) the lines of business of the Person to be (or the property and assets of which are to be) so purchased or otherwise acquired shall be substantially the same lines of business as, or reasonably related to the lines of business as, one

or more of the principal businesses of the Borrower and its Subsidiaries and (ii) immediately before and immediately after giving *pro forma* effect to any such purchase or other acquisition, (A) no Event of Default shall have occurred and be continuing, (B) the Borrower shall be in *pro forma* compliance with the covenant set forth in —Section 7.11 and (C) the Borrower shall have delivered to the Administrative Agent, on behalf of the Lenders, at least five Business Days (or a shorter period reasonably approved by the Administrative Agent) prior to the date on which any such purchase or other acquisition is to be consummated, a certificate of an Authorized Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in clauses (i) and (ii) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition.

“**Permitted Encumbrances**” has the meaning specified in the Mortgages.

“**Permitted Holders**” means each holder of voting capital stock of ~~Holdings~~[New TopCo](#) on the Effective Date.

“**Permitted Liens**” means Liens permitted under —Section 7.01 of this Agreement.

“**Permitted Refinancing Indebtedness**” means Indebtedness issued or incurred (including by means of the extension or renewal of existing Indebtedness) to refinance, refund, extend, renew or replace existing Indebtedness (“**Refinanced Indebtedness**”); *provided* that (a) the principal amount of such refinancing, refunding, extending, renewing or replacing Indebtedness is not greater than the principal amount of such Refinanced Indebtedness plus the amount of any premiums or penalties and accrued and unpaid interest paid thereon and reasonable fees and expenses, in each case associated with such refinancing, refunding, extension, renewal or replacement, (b) such refinancing, refunding, extending, renewing or replacing Indebtedness has a final maturity that is no sooner than, and a weighted average life to maturity that is no shorter than, such Refinanced Indebtedness, (c) if such Refinanced Indebtedness or any Guarantees thereof or any security therefor are subordinated to the Obligations, such refinancing, refunding, extending, renewing or replacing Indebtedness and any Guarantees thereof and security therefor remain so subordinated on terms no less favorable to the Lenders, (d) the obligors in respect of such Refinanced Indebtedness immediately prior to such refinancing, refunding, extending, renewing or replacing are the only obligors on such refinancing, refunding, extending, renewing or replacing Indebtedness and (e) such refinancing, refunding, extending, renewing or replacing Indebtedness contains covenants and events of default and is benefited by Guarantees, if any, which, taken as a whole, are determined in good faith by an Authorized Officer of the Borrower to be no less favorable to the Borrower or the applicable Subsidiary and the Lenders in any material respect than the covenants and events of default or Guarantees, if any, in respect of such Refinanced Indebtedness.

“Permitted Subordinated Debt” means unsecured subordinated notes issued by the Borrower having terms and conditions reasonably acceptable to the Administrative Agent and consistent with the following: (a) subordination in right of payment to the Obligations on terms customary for high yield subordinated notes issued in a registered public offering or under SEC Rule 144A, (b) no scheduled payments of principal for at least one year following the Scheduled Maturity Date, (c) commercially reasonable interest rates, (d) the absence of financial maintenance covenants and (e) the absence of covenants or any other terms or conditions that, taken as a whole, are more restrictive than the covenants, terms and restrictions contained in this Agreement and the other applicable Loan Documents.

“Permitted Subordinated Debt Documents” has the meaning specified in —Section 7.16.

“Person” means any natural person, corporation, limited liability company, trust (including a business trust), joint venture, association, company, partnership, Governmental Authority or other entity.

“PIK Interest” has the meaning specified in —Section 2.08.

“PIK Interest Rate” means 11.0%.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by any Loan Party or, with respect to any such plan that is subject to Sections 412 or 430 of the Code or Title IV of ERISA, any ERISA Affiliate.

“Pledged Debt” has the meaning specified in Section 1(d)(iv) of the Security Agreement.

“Pledged Interests” has the meaning specified in Section 1(d)(iii) of the Security Agreement.

“Pro Forma Adjustment” means, for any period that includes any of the six consecutive fiscal quarters first ending following any Permitted Acquisition, with respect to the Acquired EBITDA of the applicable Acquired Entity or the Consolidated EBITDA of the Borrower affected by such acquisition, the *pro forma* increase or decrease in such Acquired EBITDA or such Consolidated EBITDA, as the case may be, projected by an Authorized Officer of the Borrower in good faith as a result of reasonably identifiable and factually supportable net cost savings or additional net costs, as the case may be, realizable during such period by combining the operations of such Acquired Entity with the operations of the Borrower and its Subsidiaries, *provided* that so long as such net cost savings or additional net costs will be realizable at any time during such six-quarter period, it may be assumed, for purposes of projecting such *pro forma* increase or decrease to such Acquired

EBITDA or such Consolidated EBITDA, as the case may be, that such net cost savings or additional net costs will be realizable during the entire such period; *provided further* that any such *pro forma* increase or decrease to such Acquired EBITDA or such Consolidated EBITDA, as the case may be, shall be without duplication for net cost savings or additional net costs actually realized during such period and already included in such Acquired EBITDA or such Consolidated EBITDA, as the case may be.

“Public Issuance” means the issuance or sale of Equity Interests of [HoldingsNew TopCo](#) or any of its Subsidiaries that constitutes a public offering under the Securities Act.

“Register” has the meaning specified in ~~—~~Section 10.06(d).

“Related Parties” means, with respect to any Person, such Person’s² Affiliates and the partners, directors, officers, employees, agents, trustees, attorneys and advisors of such Person and of such Person’s² Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

“Reorganization Consummation Date” means the date of the substantial consummation (as defined in section 1101 of the Bankruptcy Code) of the Reorganization Plan that has been confirmed by an order of the Bankruptcy Court that has not been revoked or stayed and is otherwise in full force and effect at the time of such substantial consummation.

“Reorganization Plan” means the Joint Plan of Reorganization of [Old Star Tribune](#) Holdings and its affiliated debtors approved by the Bankruptcy Court by order signed [September](#) [], 2009.

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the Total Outstandings; *provided* that the portion of the Total Outstandings held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Required Tranche A Lenders” means, as of any date of determination, Tranche A Lenders having more than 50% of the aggregate Outstanding Amount of all Tranche A Loans; *provided* that the portion of such aggregate Outstanding Amount held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Tranche A Lenders.

“Required Tranche B Lenders” means, as of any date of determination, Tranche B Lenders having more than 50% of the aggregate Outstanding Amount of all Tranche B Loans; *provided* that the portion of such aggregate Outstanding

Amount held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Tranche B Lenders.

“Responsible Officer” means the chief executive officer, president, chief financial officer, senior vice president of finance, vice president of finance, controller, general counsel, treasurer, assistant treasurer, secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent of any thereof), or on account of any option, warrant or other right to acquire any such dividend or other distribution or payment.

“Restructuring Transactions” [has the meaning specified for such term in the Reorganization Plan.](#)

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“Scheduled Maturity Date” has the ~~meanings~~[meaning](#) specified in the definition of Maturity Date.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Hedge Agreement” means any Swap Contract permitted under Article VII that is entered into by and between the Borrower and any Hedge Bank and designated by the Borrower as being a “Secured Hedge Agreement”.

“Secured Obligations” has the meaning specified in Section 2 of the Security Agreement.

“Secured Parties” means, collectively, the Agents, the Lenders and the Hedge Banks.

“Securities Act” means the United States Securities Act of 1933.

“**Security Agreement**” means a security agreement substantially in the form of Exhibit E hereto, together with each other security agreement and Security Agreement Supplement delivered pursuant to —Section 6.12.

“**Security Agreement Supplement**” has the meaning specified in Section 24(b) of the Security Agreement.

“**Specified Capacity**” has the meaning specified in Section 10.04(b).

“**SPC**” has the meaning specified in —Section 10.06(i).

“**Specified Equity Interests**” means Equity Interests that (a) have no mandatory redemption feature exercisable on a date earlier than 180 days after the Scheduled Maturity Date, (b) have no requirements for the payment of dividends or other distributions in cash on a date earlier than 180 days after Scheduled Maturity Date, and (c) contain covenants, if any, no more restrictive than those customarily found in a high-yield debt offering.

“**Subsidiary**” of a Person means a corporation, partnership, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantors**” means the Subsidiaries of the Borrower listed on Schedule 1.01-B and each other Subsidiary of the Borrower that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to —Section 6.12.

“**Subsidiary Guaranty**” means the ~~Amended and Restated~~ Subsidiary Guaranty made by the Subsidiary Guarantors in favor of the Administrative Agent on behalf of the Lenders, substantially in the form of Exhibit D-2, together with each other guaranty and guaranty supplement delivered pursuant to —Section 6.12.

“**Surviving Indebtedness**” means the Indebtedness of each Loan Party and its Subsidiaries outstanding immediately before and after giving effect to the occurrence of the Effective Date, either as described in Part (b) of Schedule 5.05 or, to the extent not so described, in an aggregate principal amount not to exceed \$1,000,000.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps,

commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of ISDA Master Agreement, including any such obligations or liabilities under any ISDA Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Threshold Amount” means \$3,000,000.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans.

“Tranche A Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make (or be deemed to make) a Tranche A Term Loan on the Effective Date, expressed as an amount representing the maximum principal amount of such Tranche A Term Loan, as such commitment may be (a) reduced from time to time pursuant to —Section 2.06 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to —Section 10.06. The amount of each Lender’s Tranche A Commitment as of the Effective Date is set forth on Schedule 2.01 hereto. The initial aggregate amount of the Tranche A Commitment is \$60,000,000.

“Tranche A Facility” means, at any time, the aggregate Tranche A Commitments or Tranche A Term Loans, as applicable, of all Lenders at such time.

“**Tranche A Lender**” means a Lender with a Tranche A Commitment or an outstanding Tranche A Term Loan.

“**Tranche A Note**” means a promissory note of the Borrower payable to the order of any Tranche A Lender, in substantially the form of Exhibit A-1 hereto.

“**Tranche A Term Loan**” means a Loan made (or deemed to be made) pursuant to —Section 2.01(a).

“**Tranche B Commitment**” means, with respect to each Lender, the commitment, if any, of such Lender to make (or be deemed to make) a Tranche B Term Loan on the Effective Date, expressed as an amount representing the maximum principal amount of such Tranche B Term Loan, as such commitment may be (a) reduced from time to time pursuant to —Section 2.06 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to —Section 10.06. The amount of each Lender’s Tranche B Commitment as of the Effective Date is set forth on Schedule 2.01 hereto. The initial aggregate amount of the Tranche B Commitment is \$40,000,000.

“**Tranche B Facility**” means, at any time, the aggregate Tranche B Commitments or Tranche B Term Loans, as applicable, of all Lenders at such time.

“**Tranche B Lender**” means a Lender with a Tranche B Commitment or an outstanding Tranche B Term Loan.

“**Tranche B Note**” means a promissory note of the Borrower payable to the order of any Tranche B Lender, in substantially the form of Exhibit A-2 hereto.

“**Tranche B Term Loan**” means a Loan made (or deemed to be made) pursuant to —Section 2.01(b).

“**Transaction**” means, collectively, (a) the entering into by the Loan Parties and their applicable Subsidiaries of the Loan Documents to which they are or are intended to be a party and (b) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York.

“**Unaccrued Indemnity Claims**” means claims for indemnification, expense reimbursement or yield protection payments that may be asserted by the Agents, any Lender or any other Indemnitee under the Loan Documents that are unaccrued and contingent and as to which no claim, notice or demand has been given to or made on the Borrower (unless the making or giving thereof is prohibited or enjoined by any applicable Law or any order of any Governmental Authority);

provided that the failure of any Person to make or give any such claim, notice or demand or otherwise to respond to any such request shall not be deemed to be a waiver and shall not otherwise affect any such claim for indemnification.

“**United States**” and “**U.S.**” mean the United States of America.

Section 1.02. *Other Interpretive Provisions.* With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “**include,**” “**includes**” and “**including**” shall be deemed to be followed by the phrase “without limitation.” The word “**will**” shall be construed to have the same meaning and effect as the word “**shall.**” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document and this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “**herein,**” “**hereof**” and “**hereunder,**” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits, Preliminary Statements, Schedules and Recitals shall be construed to refer to Articles and Sections of, and Exhibits, Preliminary Statements, Schedules and Recitals to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and to any successor law or regulation, and (vi) the words “**asset**” and “**property**” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “**from**” means “**from and including**”; the words “**to**” and “**until**” each mean “**to but excluding**”; and the word “**through**” means “**to and including.**”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03. *Accounting Terms.* (a) *Generally.* Except as otherwise expressly provided herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP as in effect from time to time.

(b) *Changes in GAAP.* If at any time any change in GAAP, or any application of GAAP on other than a consistent basis, would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or manner of application (subject to the approval of the Required Lenders); *provided that*, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP as in effect prior to such change therein and on a consistent basis and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP or manner of application thereof.

Section 1.04. *Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

ARTICLE 2 COMMITMENTS AND LOANS

Section 2.01. *The Loans.* Subject to the terms and conditions set forth herein, (a) each Tranche A Lender shall be deemed to have made a Tranche A Term Loan hereunder on the Effective Date in an amount equal to such Lender's Tranche A Commitment and (b) each Tranche B Lender shall be deemed to have made a Tranche B Term Loan hereunder on the Effective Date in an amount equal to such Lender's Tranche B Commitment. Amounts repaid or prepaid in respect of the Loans may not be reborrowed.

Section 2.02. *Continuations of Loans.* (a) All Eurodollar Rate Loans outstanding hereunder shall, automatically and without any further action taken by the Borrower, be continued with an Interest Period of three months, and any such

continuation of Loans for an additional Interest Period of three months, shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Loans.

(b) The Administrative Agent shall promptly notify the Borrower and the Lenders (in writing or by telecopier or other electronic communication) of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate.

Section 2.03. *[Reserved]*.

Section 2.04. *[Reserved]*.

Section 2.05. *Prepayments. (a) Optional.*

(i) The Borrower may, upon notice to the Administrative Agent at any time or from time to time, voluntarily prepay Loans in whole or in part without premium or penalty; *provided* that (A) such notice must be received by the Administrative Agent not later than 1:00 p.m. three Business Days prior to any date of prepayment; and (B) any partial prepayment shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment, the payment amount specified in such notice shall be due and payable on the date specified therein and each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages of the applicable Facility; *provided* that any such notice of a prepayment to be made in connection with, and with the proceeds of, any refinancing of all or a portion of the Facilities, or with the proceeds of any incurrence of Indebtedness, issuance of Equity Interests or Disposition of assets of the Borrower or any of its Subsidiaries, may be, if expressly so stated to be, contingent upon the consummation of such incurrence, issuance or Disposition (*provided further* that the failure to make any such prepayment as a result of the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under ~~—~~Section 3.05). Any prepayment of a Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to ~~—~~Section 3.05.

(ii) No Lender may reject any voluntary prepayment pursuant to this ~~—~~Section 2.05(a).

(b) *Mandatory.*

(i) If any Loan Party or any of its Subsidiaries Disposes of any property or assets (other than any Disposition of any property or assets permitted by Section 7.05(a), (b), ~~—(c), —(d), —(e), —(f), —(g), —(h), —(i), —(j), —(k)~~ or (m)) and the aggregate Net Cash Proceeds received by the Loan Parties and such Subsidiaries in any fiscal year in connection with any such Disposition and any related Disposition exceeds \$1,000,000, the Borrower shall, within five Business Days of receipt of such Net Cash Proceeds, prepay an aggregate principal amount of Loans equal to 100% of such Net Cash Proceeds, and thereafter as and when additional Net Cash Proceeds are received during such year in an aggregate amount of \$1,000,000 or more, the Borrower shall, within five Business Days after receipt of such Net Cash Proceeds, further prepay the principal of the Loans in an amount equal to 100% of such Net Cash Proceeds; *provided, however*, that, with respect to any Net Cash Proceeds realized under a Disposition described in this ~~—~~Section 2.05(b)(i) (other than any Disposition of real property), (A) at the option of the Borrower (as elected by the Borrower in writing to the Administrative Agent on or prior to the fifth Business Day after the date of receipt of such Net Cash Proceeds), and so long as no Event of Default shall have occurred and be continuing, the Borrower may reinvest up to 50% of such Net Cash Proceeds in operating assets so long as such reinvestment is made within 180 days after the receipt of such Net Cash Proceeds (as certified by the Borrower in writing to the Administrative Agent); *provided further, however*, that any Net Cash Proceeds not so reinvested shall be immediately applied to the prepayment of the Loans as set forth in this ~~—~~Section 2.05 upon the expiration of such 180-day period; and (B) any amount reinvested under the first proviso herein shall not be included in determining the amount of any required prepayment of the Loans under this ~~—~~Section 2.05(b)(i).

(ii) Upon the Public Issuance by ~~Holdings~~[New TopCo](#) of any of its Equity Interests, the Borrower shall prepay Loans in an aggregate principal amount equal to 50% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by any Loan Party or any Subsidiary.

(iii) Upon the incurrence, offering, placement or issuance by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to ~~—~~Section 7.02 (excluding Section 7.02(c)(viii)), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by any Loan Party or such Subsidiary.

(iv) In the event that any Loan Party shall receive Net Cash Proceeds from Extraordinary Receipts in excess of \$500,000 in the aggregate in any fiscal year, such Loan Party shall, within five Business Days after receipt of such Net Cash Proceeds by such Loan Party, apply an amount equal to 100% of such Net Cash Proceeds to prepay outstanding Loans *provided, however*, that, with respect to any Net Cash Proceeds realized from an Extraordinary Receipt with respect to insurance proceeds (with respect to real or personal property) or condemnation awards described in this Section 2.05(b)(iv), (A) at the option of the Borrower (as elected by the Borrower in writing to the Administrative Agent on or prior to the fifth Business Day after the date of receipt of such Net Cash Proceeds), and so long as no Event of Default shall have occurred and be continuing, the Borrower may reinvest all or any portion of such Net Cash Proceeds in assets useful in the business so long as such reinvestment is made within 270 days after the receipt of such Net Cash Proceeds (as certified by the Borrower in writing to the Administrative Agent); *provided further, however*, that any Net Cash Proceeds not so reinvested shall be immediately applied to the prepayment of the Loans as set forth in this — Section 2.05 upon the expiration of such 270-day period; and (B) any amount reinvested under the first proviso herein shall not be included in determining the amount of any required prepayment of the Loans under this Section 2.05(b)(iv).

(v) Each prepayment of Loans pursuant to clause, —(i), —(ii), (iii) or (iv) of this —Section 2.05(b) shall be applied first to prepay outstanding Tranche A Term Loans and second to prepay outstanding Tranche B Term Loans, in each case on a pro rata basis.

Section 2.06. *Termination of Commitments.* The Commitments shall be automatically and permanently reduced on the Effective Date (after giving effect to the deemed Borrowing as described in —Section 2.01), to zero.

Section 2.07. *Repayment of Loans.* The Borrower shall repay to the Administrative Agent for the ratable account of the Lenders the aggregate principal amount of all Loans outstanding on the Maturity Date.

Section 2.08. *Interest.* (a) Subject to the provisions of —Section 2.08(d), (i) each Tranche A Term Loan shall bear cash interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period (as determined at the commencement of such Interest Period) plus the Applicable Margin; and (ii) each Tranche B Term Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the PIK Interest Rate (the “**PIK Interest**”) to be paid in kind by increasing the principal amount of the Tranche B Term Loans, *provided*

that at the option of the Borrower, interest on all or a portion of the outstanding principal amount of the Tranche B Term Loans for any Interest Period may instead be paid in cash at a rate per annum equal to the Eurodollar Rate for such Interest Period (as determined at the commencement of such Interest Period) plus the Applicable Margin (the “**Cash Interest**”). All PIK Interest shall be treated as principal of the Tranche B Term Loans for all purposes of this Agreement (regardless of whether evidenced by any Note).

(b) The Borrower may elect to pay Cash Interest for any Interest Period with respect to all or a portion of the outstanding principal amount of the Tranche B Term Loans by delivering a notice (the “**Cash Interest Election Notice**”) at least three Business Days prior to the end of the related Interest Period. Each Cash Interest Election Notice shall include information to the following effect: (i) the relevant Interest Payment Date; and (ii) the portion of the outstanding principal amount of the Tranche B Term Loans that will be subject to Cash Interest. If the Borrower does not deliver a Cash Interest Election Notice, the interest on the Tranche B Term Loans will be payable on the related Interest Payment Date entirely as PIK Interest.

(c) If any event set forth in ~~—~~Section 3.02 or ~~—~~3.03 shall have occurred, then (i) within 15 days after any notice given to the Borrower by the affected Lender or Lenders, the Agents and the Borrower shall enter into negotiations in good faith with a view to agreeing to an alternative interest rate acceptable to the Borrower to maintain affected Loans (which, in no event, shall be less than 5.0% per annum plus the Applicable Margin) and (ii) if, at the expiration of 20 days from the giving of such notice by the Agents, the Agents and the Borrower shall not have reached an agreement, such Loans will bear interest at a rate per annum equal to (A) (1) the greater of (x) 5.0% and (y) each such Lender’s cost of funds plus (2) the Applicable Margin or (B) the PIK Interest Rate, as applicable.

(d) (i) If there shall exist an Event of Default, then upon the written request of the Required Lenders all outstanding Obligations shall thereafter, for so long as such Event of Default shall exist, bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(e) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09. *Fees.* The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Unless otherwise expressly agreed by the Agents in writing, such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

Section 2.10. *Computation of Interest and Fees.* All computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11. *Evidence of Indebtedness.* The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made (or deemed made) by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

Section 2.12. *Payments Generally; Administrative Agent's Clawback.* (a) *General.* All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. All payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:30 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:30 p.m. may, in the Administrative Agent's sole discretion, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b)

(i) *Payments by Borrower; Presumptions by Administrative Agent.* Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Federal Funds Rate.

(ii) *Obligations of Lenders Several.* The failure of any Lender to make payments pursuant to ~~Section 9.05~~ on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make payments pursuant to ~~Section 9.05~~.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive absent manifest error.

(c) *Funding Source.* Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(d) *Insufficient Payment.* Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Agents and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Agents and the Lenders in the order of priority set forth in ~~Section 8.03~~. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent shall apply such funds as directed by the Borrower or, if the Borrower shall fail to provide any such direction following a request therefor from the Administrative Agent, the Administrative Agent may, but shall not be obligated to, elect to distribute all or part of such funds to each of the

Lenders in accordance with such Lender's Applicable Percentage of the aggregate Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans then owing to such Lender.

Section 2.13. *Sharing of Payments by Lenders.* If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

ARTICLE 3 TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01. *Taxes.* (a) *Payments Free of Taxes.* Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; *provided* that if the Borrower or any other Person shall be required by applicable law to deduct any Indemnified Taxes or any Other Taxes from such payments, then (i) the sum payable shall be increased as

necessary so that after making all required deductions (including deductions applicable to additional sums payable under this —Section 3.01) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) *Payment of Other Taxes by the Borrower.* Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Indemnified Taxes or Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) *Indemnification by the Borrower.* The Borrower shall indemnify the Administrative Agent and each Lender, within 10 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this —Section 3.01) paid by the Administrative Agent or such Lender, as the case may be, and, without duplication, any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. After the Administrative Agent or any Lender (as the case may be) learns of the imposition of any Indemnified Taxes or Other Taxes, the Administrative Agent or any Lender (as the case may be) will act in good faith to promptly notify the Borrower of its obligations hereunder.

(d) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) *Status of Lenders.* Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law and as are reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be

made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that the Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN (or any successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any successor form),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” (as such term is used in Section 881(c)(3)(A) of the Code), (B) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.

(f) *Treatment of Certain Refunds.* If the Administrative Agent or any Lender determines, in its sole discretion, which shall be applied in good faith, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this —Section 3.01, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this —Section 3.01 with respect to

the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or any Lender, as the case may be, and withholding at any amounts as required under applicable Law and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection (f) shall not be construed to require the Administrative Agent or any Lender to file its returns in a particular manner or to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

Section 3.02. *Illegality.* If any Change in Law has made it unlawful, or any Governmental Authority has asserted that a Change in Law has made it unlawful, for any Lender or its applicable Lending Office to maintain Eurodollar Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent and for so long as such condition exists, the provisions of ~~—~~Section 2.08(c) shall apply to Loans made by such Lender.

Section 3.03. *Inability to Determine Rates.* If the Required Lenders determine that for any reason in connection with any request for a continuation of a Eurodollar Rate Loan that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan or (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the provisions of Section 2.08(c) shall apply until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice.

Section 3.04. *Increased Costs; Reserves on Eurodollar Rate Loans.* (a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement taken into account in determining the Eurodollar Rate); or

(ii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of maintaining any Eurodollar Rate Loan, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this ~~Section 3.04~~ or in ~~Section 3.05~~, and specifying in reasonable detail the basis for such compensation, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Notwithstanding anything in this Agreement to the contrary, the Borrower shall not be obligated to make any payment to any Lender under this ~~Section 3.04~~ in respect of any Change in Law for any period more than 180 days prior to the date on which such Lender gives written notice to the Borrower of its intent to request such payment under this ~~Section 3.04~~; *provided, however*, that if such Change in Law has retroactive effect, the Borrower shall be required to make any such payments for the period of retroactivity.

Section 3.05. *Compensation for Losses.* Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, payment or prepayment of any Eurodollar Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay or continue any Eurodollar Rate Loan on the date or in the amount notified by the Borrower;

including any loss of anticipated profits (excluding the Applicable Margin) and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. For purposes of calculating amounts payable by the Borrower to the Lenders under this —Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

Section 3.06. *Mitigation Obligations.* If (a) any Lender shall request compensation under —Section 3.01, (b) any Lender delivers a notice described in —Section 3.02 or (c) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority on account of any Lender pursuant to —Section 3.04, then such Lender shall use reasonable efforts (which shall not require such Lender to incur an unreimbursed loss or unreimbursed cost or expense or otherwise take any action inconsistent with its internal policies or legal or regulatory restrictions or suffer any disadvantage or burden deemed by it to be significant) (i) to file any certificate or document reasonably requested in writing by the Borrower or (ii) to assign its rights and delegate and transfer its obligations hereunder to another of its offices, branches or affiliates, if such filing or assignment would reduce its claims for compensation under —Section 3.01 or enable it to withdraw its notice pursuant to —Section 3.02 or would reduce amounts payable pursuant to —Section 3.04, as the case may be, in the future. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such filing or assignment, delegation and transfer.

Section 3.07. *Survival.* This Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE 4 CONDITIONS PRECEDENT TO EFFECTIVENESS

Section 4.01. *Conditions to Effectiveness.* This Agreement shall not become effective until the date on which each of the following conditions of this Section 4.01 is satisfied (or waived in accordance with —Section 10.01):

(a) The Administrative Agent shall have received each of the following, each of which shall be originals or telecopies (followed promptly by originals),

each dated the Effective Date (or, in the case of certificates of governmental officials, a recent date before the Effective Date) each in form and substance satisfactory to the Administrative Agent and in such number of copies as may be requested by the Administrative Agent:

- (i) duly executed counterparts of this Agreement and the Guaranties;
- (ii) a Note or Notes duly executed by the Borrower in favor of each Lender requesting the same at least two Business Days prior to the Effective Date;
- (iii) the Security Agreement, duly executed by each Loan Party, together with:
 - (A) certificates representing the Pledged Interests referred to therein that constitute certificated securities (as defined in the Uniform Commercial Code) accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank,
 - (B) financing statements, in proper form for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may reasonably deem necessary or desirable in order to perfect and protect the first priority liens and security interests created under the Security Agreement, and
 - (C) evidence of the completion of all other actions, recordings and filings of or with respect to the Security Agreement that the Administrative Agent may reasonably deem necessary or desirable in order to perfect and protect the liens and security interests created thereby and that all filing and recording taxes and fees (if any) have been paid,
- (iv) with respect to each parcel of real property described on ~~Part A of~~ Schedule 4.01(a)(iv), Mortgages in favor of the Collateral Agent, as mortgagee for the ratable benefit of the Secured Parties, and provide the Collateral Agent with (i) evidence of the completion (or satisfactory arrangements for the completion) of all recordings and filings of such Mortgage as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable effectively to create a valid, perfected, first priority Lien, subject to Permitted Liens, against the properties purported to be covered thereby, (ii) fully paid Mortgage Policies in favor of the Collateral Agent, as mortgagee for the ratable benefit of the Secured Parties, in amounts and in form and substance and issued by insurers, in each case

reasonably satisfactory to the Collateral Agent, with respect to the property purported to be covered by such Mortgage, insuring that title to such property is indefeasible and that the interests created by the Mortgage constitute valid first Liens thereon free and clear of all defects and encumbrances other than Permitted Liens or as approved by the Collateral Agent, and (iii) such other approvals, opinions, or documents as the Collateral Agent may reasonably request;

(v) such duly executed certificates of resolutions or consents, incumbency certificates and/or other duly executed certificates of Responsible Officers of each Loan Party as the Administrative Agent or the Lenders may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(vi) such documents and duly executed certifications as the Administrative Agent or the Lenders may reasonably require to evidence that each Loan Party is validly existing and in good standing in its jurisdiction of incorporation or formation;

(vii) an opinion of Davis Polk & Wardwell, special counsel to the Loan Parties, addressed to each Agent and each Lender, in substantially the form of Exhibit F-1;

(viii) an opinion of Morris, Nichols, ~~Arst~~Arshnt & Tunnell LLP, local counsel to the Loan Parties in Delaware, in substantially the form of Exhibit F-2;

(ix) a certificate signed by an Authorized Officer of the Borrower certifying that the conditions specified in —Section 4.01(d) and —(e) have been satisfied;

(x) unaudited consolidated balance sheets and related statements of income and cash flows for the Borrower for the most recent fiscal quarter ended after December 28, 2008 and at least 45 days before the Effective Date;

(xi) a *pro forma* consolidated balance sheet of the Borrower as of June 28, 2009, giving effect to the Transaction and the consummation of the Reorganization Plan as if the Transaction and such consummation had occurred as of such date;

(xii) forecasts prepared by management of the Borrower of balance sheets, income statements and cash flow statements for the

Borrower and its Subsidiaries on an annual basis for the first fiscal year following the Effective Date through December 30, 2012; it being understood and agreed that (A) any financial or business projections furnished by the Borrower are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower, (B) no assurance is given by the Borrower that the results or forecast in any such projections will be realized and (C) the actual results may differ from the forecast results set forth in such projections and such differences may be material; and

(xiii) such other certificates, documents, information or consents as the Administrative Agent may reasonably request.

(b) To the extent invoiced to the Borrower at least two Business Days prior to the Effective Date, the Borrower shall have paid all accrued fees and expenses of the Agents (including the reasonable fees, disbursements and other charges of Latham & Watkins LLP, as counsel to the Agents) payable by the Borrower hereunder on or before the Effective Date.

(c) The Reorganization Consummation Date shall have occurred.

(d) The representations, warranties and certifications of or on behalf of the Loan Parties contained in Article V or any other Loan Document or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(e) No Default or Event of Default has occurred and is continuing, or would result from the making (or the deemed making) of the Loans.

Without limiting the generality of the provisions of ~~—~~Section 9.02, for purposes of determining compliance with the conditions specified in this ~~—~~Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document that has been delivered to such Lender or any other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Agents and the Lenders (it being understood and agreed that the representations and warranties made on the Effective Date are deemed made concurrently with, and after giving effect to, the consummation of the Transaction on the Effective Date) that:

Section 5.01. *Existence, Qualification and Power; Compliance With Laws.* Each Loan Party and each of the Subsidiaries ~~(other than any Immaterial Subsidiaries)~~ (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its organization or formation, (b) has all requisite corporate, partnership or limited liability company power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified to do business in, and is in good standing under the Laws of, each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect, and (d) is in compliance with the requirements of all Laws applicable to it or to its properties except in such instances in which (A) such requirement of Law is being contested in good faith by appropriate proceedings diligently conducted or (B) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 5.02. *Authorization; No Contravention.* The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transaction, are within such Loan Party's corporate, partnership or limited liability company or other powers, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien (other than Liens created under the Collateral Documents and Liens permitted under Section 7.01(q)) under, or require any prepayment, redemption or repurchase of any obligation under, any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries; or (c) violate (i) any Law (it being understood that at any time that this representation and warranty is made or deemed to be made, this clause (c)(i) shall refer only to Laws in effect at such time) or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject, in each case under this

clause —(c) in a manner that would reasonably be expected to result in a Material Adverse Effect.

Section 5.03. *Governmental Authorization.* No approval, consent, exemption, authorization or other action by, or notice to or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery and performance by each Loan Party of each Loan Document to which it is a party, except for (i) the filing of UCC financing statements and filings to perfect security interests with the United States Patent and Trademark Office and the United States Copyright Office, (ii) recordation of any Mortgage and (iii) such as have been made or obtained and are in full force and effect.

Section 5.04. *Binding Effect.* This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party party thereto will constitute, a legal, valid and binding agreement of each Loan Party party thereto, enforceable against such Loan Party in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws relating to or affecting creditor's rights generally, concepts of reasonableness and the effect of general principles of equity, regardless of whether applied by a court of law or equity.

Section 5.05. *Financial Statements.* (a) The unaudited financial statements of the Borrower and its Subsidiaries for the fiscal year ended December 28, 2008 (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, subject, in the case of clauses —(i) and —(ii), to the absence of footnotes and to normal year-end audit adjustments.

(b) The quarterly unaudited consolidated financial statements of the Borrower and its Subsidiaries delivered to the Administrative Agent pursuant to — Section 4.01(a)(x), and the related consolidated statements of income or operations and cash flows for the period then ended, (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses —(i) and —(ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) As of the Effective Date, and except for Indebtedness, liabilities and obligations that do not exceed \$1,000,000 in the aggregate, Parts (a) and (b) of Schedule 5.05 set forth all Existing Indebtedness and all Surviving Indebtedness, respectively, of each Loan Party and its Subsidiaries.

(d) The consolidated pro forma balance sheet of the Borrower and its Subsidiaries delivered in accordance with Section 4.01(a)(xi) is consistent with the historical balance sheet as of the corresponding date delivered pursuant to Section 4.01(a)(ix), with the adjustments noted therein.

Section 5.06. *Litigation.* Except as disclosed in Schedule 5.06, there are no actions, suits, proceedings, claims, disputes or investigations pending or, to the knowledge of the Borrower, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues, that either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 5.07. *Ownership Of Property; Liens.* (a) Each Loan Party and each of its Subsidiaries has good, marketable and insurable title to, or valid leasehold interests in, all real property necessary to the conduct of its business, free and clear of any Liens except for Liens set forth on Schedule 5.07(a) or as otherwise permitted by —Section 7.01 or such defects in title as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Set forth on Schedule 5.07(b) hereto is a complete and accurate list of all real property owned by any Loan Party or any of its Subsidiaries as of the Effective Date, showing as of such date the street address, county or other relevant jurisdiction, state and record owner thereof.

Section 5.08. *Environmental Compliance.* (a) Each Loan Party is, and since has been, in compliance with the requirements of existing Environmental Laws, except in such instances where failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Except as otherwise may be set forth on Schedule 5.08 or as would not reasonably be expected to result in a Material Adverse Effect: none of the properties currently or formerly owned or operated by any Loan Party or any of its Subsidiaries is listed or, to the knowledge of such Loan Party, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list; there are no underground or aboveground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by

any Loan Party or any of its Subsidiaries or on any property formerly owned or operated by any Loan Party or any of its Subsidiaries; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries (as to formerly owned property, only during such ownership or operation).

(c) Except as otherwise may be set forth on Schedule 5.08 or as would not reasonably be expected to result in a Material Adverse Effect, neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries (as to formerly owned property, only during such ownership or operation) have been disposed of in a manner not reasonably expected to result in a Material Adverse Effect.

Section 5.09. *Insurance.* The properties of each Loan Party and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party or the applicable Subsidiary operates.

Section 5.10. *Taxes.* Each Loan Party and its Subsidiaries have filed all Federal, state and other income tax returns and reports and all other material tax returns required to be filed, and have paid all material Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted or for which an extension has been granted and, in each case, for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Borrower or any Subsidiary that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any of its Subsidiaries is party to any tax sharing agreement other than any such agreement among two or more Loan Parties (and no other Persons).

Section 5.11. *Subsidiaries; Equity Interests; Loan Parties.* On the Effective Date, the Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.11, and all of the outstanding Equity Interests in such Subsidiaries owned by the Borrower or any of its Subsidiaries have been

validly issued, are fully paid and non-assessable (to the extent such terms are applicable) and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.11 free and clear of all Liens except (a) those created under the Collateral Documents and (b) Liens permitted under Sections —7.01(c) or —(h). No Loan Party has any Equity Interests or other equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.11 or as otherwise permitted under —Section 7.03. All of the outstanding Equity Interests in each Loan Party (other than [HoldingsNew TopCo](#)) have been validly issued, are fully paid and non-assessable (to the extent such terms are applicable) and, as of the Effective Date, are owned by such Person or Persons and in the amounts specified on Part (c) of Schedule 5.11 free and clear of all Liens except (i) those created under the Loan Documents and (ii) Liens permitted under Sections —7.01(c), —(h) or (q). Set forth on Part (d) of Schedule 5.11 is a complete and accurate list, as of the Effective Date, of all Loan Parties, showing (as to each such Loan Party) the jurisdiction of its organization or formation, the address of its principal place of business and its United States taxpayer identification number. As of the Effective Date, the copy of the charter of each Loan Party and each amendment thereto provided pursuant to —Section 4.01(a)(vi) is a true and correct copy of each such document, each of which is valid and in full force and effect.

Section 5.12. *Investment Company Act.* No Loan Party is required to register as an “investment company” under the Investment Company Act of 1940.

Section 5.13. *Intellectual Property; Licenses, Etc.* The Borrower and its Subsidiaries own, or possess the right to use, all of the material trademarks, service marks, trade names, domain names, copyrights, and, to the knowledge of the Borrower, patents and other intellectual property rights (collectively, “**IP Rights**”) that are reasonably necessary for the operation of their respective businesses, without infringement, dilution or misappropriation with the rights of any other Person, except to the extent that such infringement, dilution or misappropriation, either individually or in the aggregate, would not be reasonably expected to have a Material Adverse Effect, or except as set forth on Schedule 5.13. No claim, investigation, proceeding or litigation regarding any of the IP Rights is pending or, to the knowledge of the Borrower, threatened, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 5.14. *Validity, Priority and Perfection of Security Interests in the Collateral.* The Collateral Documents create in favor of the Collateral Agent for the benefit of the Secured Parties a valid security interest in the Collateral, securing the payment of the Secured Obligations under the Loan Documents, and (i) when financing statements and other filings in appropriate form describing the Collateral with respect to which a security interest may be perfected by filing or recordation are filed or recorded with the appropriate Governmental Authority and (ii) upon the taking of possession or control by the Collateral Agent of the Collateral with

respect to which a security interest may be perfected only by possession or control, the Liens created by the Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors in the Collateral to the extent such security interests can be perfected by such filing, recordation, possession or control with the priority required by the Loan Documents. The Loan Parties are the legal and beneficial owners of the Collateral free and clear of any Lien, except for the liens and security interests created or permitted under the Loan Documents.

ARTICLE 6 AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, the Borrower shall, and shall (except in the case of the covenants set forth in Sections ~~—6.01~~, ~~—6.02~~ and ~~—6.03~~) cause each Subsidiary to:

Section 6.01. *Financial Statements.* Deliver to the Administrative Agent, which shall distribute to each Lender, in form and detail satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within 135 days after the fiscal year ended December 27, 2009 and 105 days after the end of each fiscal year of the Borrower thereafter, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year (*provided* that for the fiscal year ended December 27, 2009, only for the period commencing on the Effective Date and ending on December 27, 2009), setting forth in each case commencing with the fiscal year ending closest to December 31, 2010, in comparative form the figures for the previous fiscal year, prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days (or, in the case of the fiscal quarter ending September 27, 2009, 60 days) after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ending September 27, 2009) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statement of income or operations for such fiscal quarter and the related consolidated statements of income or operations and cash flows for the

portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, certified by an Authorized Officer of the Borrower as fairly presenting the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available, but in any event within 30 days after the end of each fiscal month of the Borrower (or, in the case of any fiscal month that ends on a fiscal quarter end, 45 days after the end of such fiscal quarter), commencing with the fiscal month ended November 1, 2009, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal month, and the related statements of income or operations, shareholders' equity and cash flows for such fiscal month, which financial statements shall be substantially in the form of the monthly financial statements provided to the Lenders prior to the Effective Date; and

(d) as soon as available, but in any event no later than 90 days after the fiscal year ending December 27, 2009 and 60 days after the end of each fiscal year of the Borrower thereafter, forecasts in reasonable detail for such fiscal year as customarily prepared by management of the Borrower for their internal use of consolidated income statements of the Borrower and its Subsidiaries on a quarterly basis for the fiscal year following such fiscal year; it being understood and agreed that (i) any financial or business projections furnished by the Borrower are subject to significant uncertainties and contingencies, which may be beyond the control of the Borrower, (ii) no assurance is given by the Borrower that the results or forecast in any such projections will be realized and (iii) the actual results may differ from the forecast results set forth in such projections and such differences may be material.

As to any information contained in materials furnished pursuant to ~~Section 6.02(c)~~, the Borrower shall not be separately required to furnish such information under ~~Section 6.01(a)~~, ~~(b)~~ or (c), but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in ~~Sections 6.01(a)~~, ~~(b)~~ or (c) at the times specified therein.

Section 6.02. *Certificates; Other Information.* Deliver to the Administrative Agent (for delivery to the Lenders), in form and detail reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in ~~Section 6.01(a)~~, a certificate of its independent certified public accountants opining on such financial statements (which certificate may be limited to accounting matters and disclaim responsibility for legal interpretation) and stating

that in making the examination necessary therefor no knowledge was obtained of any Default under ~~—~~Section 7.11 of this Agreement or, if any such Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the financial statements referred to in Sections ~~—~~6.01(a) and ~~—~~(b), a duly completed Compliance Certificate signed by an Authorized Officer of the Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Borrower shall also provide, if necessary, pursuant to ~~—~~Section 1.03(b), for the determination of compliance with ~~—~~Section 7.11, a statement of reconciliation conforming such financial statements to the version of GAAP to be applied in such determination;

(c) promptly after the same are available, copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 (other than registration statements on Form S-8 or Exhibits to any of the foregoing), or with any Governmental Authority that may be substituted therefor, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly following receipt thereof, copies of any notices of default received by any Loan Party in respect of any Indebtedness in excess of the Threshold Amount, and, from time to time upon reasonable request by the Administrative Agent, such other information and reports regarding any Indebtedness in excess of the Threshold Amount as the Administrative Agent may reasonably request;

(e) promptly following the Borrower obtaining knowledge thereof, notice of any assertion of Environmental Liability against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that would reasonably be expected to have a Material Adverse Effect;

(f) from time to time, upon the reasonable request of the Administrative Agent, but in no event more often than once in any fiscal year (unless an Event of Default shall have occurred and be continuing, in which case as often as reasonably requested by the Administrative Agent), participation by senior management of the Borrower in conference calls with Lenders to discuss the Borrower's financial results;

(g) promptly, such additional information regarding the business, financial, legal or corporate affairs (including any information required under the Patriot Act) of any Loan Party or any of its Subsidiaries, or compliance with the

terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request; and

(h) promptly following any Responsible Officer of any Loan Party obtaining knowledge thereof, notice of (and such additional existing, nonprivileged documents and information in the possession of any Loan Party relating thereto as Administrative Agent may reasonably request): (i) the receipt by any Loan Party of any written notice of Environmental Liability under, or violation of, Environmental Law; (ii) the commencement of any action, suit, proceeding, claim, dispute or investigation alleging an Environmental Liability or violation of Environmental Law by or before any Governmental Authority; (iii) the receipt by any Loan Party of any written notification that any property of any Loan Party is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities; and (iv) any proposed acquisition or lease of real property by any Loan Party (except as part of any Permitted Acquisition), that in each case of clauses (i)-(iv) would reasonably be expected to result in Environmental Liabilities in excess of the Threshold Amount; *provided* that Borrower and its Subsidiaries shall have no obligation under this Section 6.02(h) with respect to any matters identified on Schedule 5.08.

Documents required to be delivered pursuant to Section ~~6.01(a)~~ or ~~(b)~~ or ~~(c)~~ may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and each Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Section 6.03. *Notices.* Promptly notify the Administrative Agent (on behalf of the Lenders):

(a) of the occurrence of any Default;

(b) of any matter (including any litigation, investigation or proceeding) that has resulted or would reasonably be expected to result in a Material Adverse Effect;

(c) of the occurrence of any ERISA Event that would reasonably be expected to have a Material Adverse Effect;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party or any of its Subsidiaries; and

(e) of the (i) occurrence of any Disposition of property or assets for which the Borrower is required to make a mandatory repayment pursuant to ~~—~~ Section 2.05(b)(i) or would be required to make a mandatory repayment pursuant to ~~—~~Section 2.05(b)(i) but for the application of the first proviso therein, (ii) occurrence of any sale of capital stock or other Equity Interests for which the Borrower is required to make a mandatory repayment pursuant to ~~—~~Section 2.05(b)(i) or ~~—~~(ii), and (iii) incurrence or issuance of any Indebtedness for which the Borrower is required to make a mandatory repayment pursuant to Section 2.05(b)(iii).

Each notice pursuant to Section (a), (b), (c) or (d) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to ~~—~~Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

Section 6.04. *Payment of Obligations.* Pay and discharge as the same shall become due and payable or within 45 days thereafter, all its material obligations, including, before the same shall become delinquent, all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets and all lawful material claims which, if unpaid, would by law become a Lien upon its property; *provided, however,* that neither the Borrower nor any of its Subsidiaries shall be required to pay or discharge any such obligation that is being contested in good faith and (where appropriate) by proper proceedings and as to which appropriate reserves are being maintained to the extent required under GAAP.

Section 6.05. *Preservation of Existence, Etc.* (a) Except in a transaction permitted by ~~—~~Section 7.04 or ~~—~~7.05, preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization, except, in the case of such good standing, to the extent that the failure to preserve, renew or maintain such good standing would not reasonably be expected to result in a Material Adverse Effect; (b) take all commercially

reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which would reasonably be expected to have a Material Adverse Effect.

Section 6.06. *Maintenance of Properties.* Except to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect, maintain, preserve, protect and repair (or, in the case of casualty or condemnation, replace) all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.

Section 6.07. *Maintenance of Insurance.* ~~Except for any Immaterial Subsidiaries,~~ (a) ~~maintain~~Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' prior notice to the Administrative Agent of any material modification, termination, lapse or cancellation of such insurance and (b) furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried. Each such policy of insurance shall name the Administrative Agent as the loss payee (or, in the case of liability insurance, an additional insured) thereunder for the ratable benefit of the Secured Parties, and shall (except in the case of liability insurance) name the Administrative Agent as the "mortgagee" under a so-called "New York" long form non-contributory endorsement and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried. In addition to the foregoing, if in each case any portion of a Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (or any amendment or successor act thereto), then Borrower shall maintain, or cause to be maintained, with responsible and reputable insurance companies or associations, such flood insurance if then available in an amount sufficient to comply with all applicable rules and regulations promulgated pursuant to such Act.

Section 6.08. *Compliance with Laws.* Comply in all material respects with the requirements of all Laws applicable to it or its business or property and all orders, writs, injunctions and decrees binding on it or its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings

diligently conducted; or (b) the failure to comply therewith would not reasonably be expected to result in a Material Adverse Effect.

Section 6.09. *Books and Records.* (a) Maintain proper books of record and account, in which materially full, true and correct entries in conformity with GAAP shall be made of the financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Borrower or such Subsidiary, as the case may be.

Section 6.10. *Inspection Rights.* Permit representatives and independent contractors of each Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (at which an authorized representative of the Borrower shall be entitled to be present), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours, upon reasonable advance notice to the Borrower; *provided, however,* that (a) unless an Event of Default has occurred and is continuing, the Agents and the Lenders (and, in the case of any Lender, with at least three Business Days' prior written notice to the Administrative Agent) shall be permitted to conduct such inspections no more frequently than twice per fiscal year in the aggregate for all such inspections, it also being understood and agreed that the Borrower shall not be responsible for the expense of any such inspections other than up to two inspections per fiscal year in the aggregate for all such inspections, and (b) when an Event of Default exists any Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours. Without limiting the foregoing, if an Event of Default is continuing, then, promptly upon receipt of a written request from the Administrative Agent, the Borrower shall cause to be conducted a phase I environmental site assessment of any parcel of real property described on Schedule 4.01(a)(iv) or acquired by the Borrower and its Subsidiaries after the Effective Date on which a Mortgage is executed pursuant to Section 6.13 and deliver to the Administrative Agent a written report of such assessment; *provided* that any such assessment and report shall be conducted and prepared by a reputable environmental consulting firm reasonably acceptable to the Administrative Agent, and the form and substance of any such report shall be reasonably acceptable to the Administrative Agent.

Section 6.11. *[Reserved].*

Section 6.12. *Covenant to Guarantee Obligations and Give Security.* Upon (i) any Person becoming, after the Effective Date, a Subsidiary of the Borrower that is neither a CFC nor a Person organized in a jurisdiction outside the

United States (a “**Domestic Subsidiary**”) or (ii) (in the case of clause —(b) below only) upon the Borrower or any such Domestic Subsidiary acquiring Equity Interests in any Subsidiary, the Borrower shall so notify the Administrative Agent, and

(a) the Borrower shall promptly cause such Domestic Subsidiary to execute and deliver to the Collateral Agent, with counterparts for each Lender, a supplement to the Subsidiary Guaranty and a supplement to the Security Agreement (and, if such Domestic Subsidiary owns any real property, to the extent required by —Section 6.13(a), a Mortgage), together with Uniform Commercial Code (“~~UCC~~”) financing statements delivered by such Domestic Subsidiary naming such Domestic Subsidiary as the debtor and the Collateral Agent as the secured party, or other similar instruments or documents, in appropriate form for filing under the UCC and any other applicable recording statutes, in the case of real property, of all jurisdictions as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable to perfect the security interest of the Collateral Agent pursuant to the Security Agreement or such Mortgage, as the case may be (other than as expressly contemplated by the Security Agreement); and

(b) the Borrower shall promptly deliver, or cause to be delivered, to the Collateral Agent under the Security Agreement certificates (if any) representing all of the issued and outstanding Equity Interests in such Subsidiary that are certificated securities (as defined in the UCC) and are owned by the Borrower or any such Domestic Subsidiary, as the case may be, along with undated powers of transfer for such certificates, executed in blank;

provided that notwithstanding the foregoing, no Foreign Subsidiary and no Domestic Subsidiary that is not a wholly-owned Subsidiary shall be required to execute and deliver a Mortgage or a supplement to the Guaranty or a supplement to the Security Agreement or deliver any certificates, nor will the Borrower or any Domestic Subsidiary be required to grant a security interest in voting stock of a Foreign Subsidiary in excess of 65% of the voting stock of such Foreign Subsidiary.

(c) Notwithstanding anything contained herein to the contrary, to the extent that the Administrative Agent determines that the costs of obtaining a Lien pursuant to this —Section 6.12 on any particular asset or any group or class of assets are excessive in relation to the value of the security afforded thereby, the Administrative Agent in its discretion may waive the requirements of this — Section 6.12 in respect of such asset, group or class.

Section 6.13. *Future Acquisitions of Real Property and Perfection Requirements.* (a) In the event that ~~Holdings~~any Holding Company, the Borrower or any of ~~their~~its Domestic Subsidiaries (~~other than Immaterial Subsidiaries~~) that are wholly-owned Subsidiaries shall acquire any fee interest in real property having

a value, as determined in good faith by the Borrower, in excess of \$2,500,000, ~~Holdings~~, the Borrower or such Holding Company or such Domestic Subsidiaries shall, within 60 days after such acquisition, execute a Mortgage in favor of the Collateral Agent with (i) evidence of the completion (or satisfactory arrangements for the completion) of all recordings and filings of such Mortgage as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable effectively to create a valid, perfected, first priority Lien, subject to Permitted Liens, against the properties purported to be covered thereby, (ii) fully paid American Land Title Association Lender's Extended Coverage Title Insurance Policies (the "**Mortgage Policies**") in favor of the Collateral Agent, as mortgagee for the ratable benefit of the Secured Parties, in amounts and in form and substance and issued by issuers, in each case reasonably satisfactory to the Collateral Agent, with respect to the property purported to be covered by such Mortgage, insuring that title to such property is indefeasible and that the interests created by the Mortgage constitute valid first Liens thereon free and clear of all defects and encumbrances, other than Permitted Encumbrances or as approved by the Collateral Agent, and (iii) such other approvals, opinions or documents as the Collateral Agent may reasonably request.

(b) In accordance with the terms and provisions of the Security Agreement, ~~Holdings~~each Holding Company, the Borrower and each Domestic Subsidiary that is a wholly-owned Subsidiary shall provide the Collateral Agent with evidence of all recordings and filings as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable to create a valid, perfected first priority Lien, subject to Permitted Liens, against all personal property acquired after the Effective Date (other than as expressly contemplated by the Security Agreement).

(c) Notwithstanding anything contained herein to the contrary, to the extent that the Administrative Agent determines that the costs of obtaining a Lien or any particular asset or any group or class of assets pursuant to this —Section 6.13 are excessive in relation to the value of the security afforded thereby, the Administrative Agent in its discretion may waive the requirements of this —Section 6.13 in respect of such asset, group or class.

Section 6.14. *Compliance with Environmental Laws.* Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect: (a) comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and (c) conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to materially comply with all Environmental Laws; *provided, however*, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation

to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances.

Section 6.15. *[Reserved]*.

Section 6.16. *Further Assurances.* (a) Promptly upon reasonable request by any Agent, or any Lender through the Administrative Agent, (i) correct any material defect or error in the execution, acknowledgment, filing or recordation of any Loan Document, and (ii) execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further deeds, certificates, assurances and other instruments as any Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (A) carry out more effectively the purposes of the Loan Documents or (B) comply with Section 9 of the Security Agreement.

(b) Promptly following the delivery of the financial statements referred to in Section 6.01(a) and (b), execute and deliver to the Administrative Agent an appropriate Intellectual Property Security Agreement with respect to all After-Acquired Intellectual Property (as defined in the Security Agreement) pursuant to Section 13(g) of the Security Agreement owned by it as of the last day of the period for which such financial statements are delivered, to the extent that such After-Acquired Intellectual Property is not covered by any previous Intellectual Property Security Agreement so signed and delivered to the Administrative Agent. In each case, the Borrower shall, and shall cause each Guarantor to, promptly cooperate as reasonably necessary to enable the Administrative Agent to make any reasonably necessary recordings with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, with respect to such After-Acquired Intellectual Property.

Section 6.17. *Cash Collateral Accounts.* Maintain (a) at such time or times as the Borrower is required to maintain any amounts on deposit therein pursuant to the terms of any of the Loan Documents, a Cash Collateral Account with a commercial bank located in the United States that has executed an account control agreement with the Borrower and the Collateral Agent for the benefit of the Secured Parties pursuant to the Security Agreement and (b) at all times from and after the date which is 60 days after the date of this Agreement (as such date may be extended from time to time in the sole discretion of the Administrative Agent), all deposit accounts and securities accounts of any Loan Party (other than (i) payroll accounts, trust accounts and accounts that, in the aggregate, do not hold balances, for any period of five consecutive days, exceeding \$500,000 and (ii) that certain deposit account with Wells Fargo Brokerage Service, LLC in connection with the non-recourse Indebtedness in respect of community bonds that are secured by a \$353,000 certificate of deposit issued by, and pledged to, Wells Fargo Brokerage Service, LLC) only with banks that have executed account control agreements with the Borrower and the Collateral Agent for the benefit of the Secured Parties, in

form and substance reasonably satisfactory to the Administrative Agent (which in the case of this clause ~~—(b)~~, shall provide for the exercise of control by the Collateral Agent only upon (x) the occurrence and during the continuance of an Event of Default under ~~—Section 8.01(a)~~, (y) an exercise of remedies under ~~—Section 8.02(b)~~ or (z) amounts becoming due and payable pursuant to the proviso to ~~—Section 8.02~~).

Section 6.18. *Post-closing Covenant.* (a) Within 90 days after the Effective Date, with respect to each parcel of real property described on Schedule 5.07(b) (other than those previously mortgaged pursuant to Section 4.01(a)(iv)), execute a Mortgage in favor of the Collateral Agent, as mortgagee for the ratable benefit of the Secured Parties, and provide the Collateral Agent with (i) evidence of the completion (or satisfactory arrangements for the completion) of all recordings and filings of such Mortgage as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable effectively to create a valid, perfected, first priority Lien, subject to Permitted Liens, against the properties purported to be covered thereby, (ii) fully paid Mortgage Policies in favor of the Collateral Agent, as mortgagee for the ratable benefit of the Secured Parties, in amounts and in form and substance and issued by insurers, in each case reasonably satisfactory to the Collateral Agent, with respect to the property purported to be covered by such Mortgage, insuring that title to such property is indefeasible and that the interests created by the Mortgage constitute valid first Liens thereon free and clear of all defects and encumbrances other than Permitted Liens or as approved by the Collateral Agent, and (iii) such other approvals, opinions, or documents as the Collateral Agent may reasonably request;

(b) Within 30 days after the Effective Date, enter into the Intellectual Property Security Agreement, duly executed by each Loan Party, together with evidence that all action that the Collateral Agent may deem necessary or desirable in order to perfect and protect the first priority liens and security interests created under the Intellectual Property Security Agreement has been authorized.

(c) Within 15 days after the Effective Date, deliver insurance certificates in such form as required by Section 11 of the Security Agreement.

ARTICLE 7 NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

Section 7.01. *Liens.* Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the date hereof and listed on Part (a) of Schedule 5.07 and any renewals or extensions thereof; *provided* that (i) the property covered thereby is not changed, (ii) the amount is not increased, (iii) none of the Loan Parties or their Subsidiaries shall become a new direct or contingent obligor and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by —Section 7.02(c)(~~iii~~ii);
- (c) Liens for taxes, assessments or other governmental charges or levies not at the time delinquent or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required under GAAP;
- (d) landlords', carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business with respect to sums which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required under GAAP;
- (e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation;
- (f) deposits to secure the performance of tenders, bids, trade contracts and leases (other than Indebtedness), statutory or regulatory obligations, surety bonds (other than bonds related to judgments or litigation), insurance obligations, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (g) minor defects or minor imperfections in title and zoning, land use and similar restrictions and easements, rights-of-way, covenants, conditions, restrictions, reservations, permits, servitudes and other similar encumbrances affecting real property which exist as of the Effective Date or were not incurred in connection with and do not secure Indebtedness or, in the aggregate, do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person, and, in the case of any real property covered by any Mortgage, any Permitted Encumbrances with respect thereto;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under —Section 8.01(h) or securing appeal or other surety bonds related to such judgments;

(i) Liens securing Indebtedness permitted under —Section 7.02(c)(v); *provided* that (i) such Liens do not at any time encumber any property other than the property the acquisition of which is financed by such Indebtedness, (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition and (iii) with respect to Capitalized Leases, such Liens do not at any time extend to or cover any Collateral or assets other than the assets subject to such Capitalized Leases;

(j) Liens on property or assets of a Person (other than any Equity Interests in any Person) existing at the time such Person is merged into or consolidated with the Borrower or any Subsidiary or becomes a Subsidiary of the Borrower or any Subsidiary Guarantor; *provided* that any such Lien was not created in contemplation of such merger, consolidation or investment and does not extend to any assets other than those of the Person merged into or consolidated with the Borrower or such Subsidiary or acquired by the Borrower or such Subsidiary; and *provided further* that any Indebtedness or other Obligations secured by such Liens shall otherwise be permitted under —Section 7.02;

(k) banker's liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts (including securities accounts) maintained by the Borrower or its Subsidiaries;

(l) any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any license or lease agreement entered into in the ordinary course of business;

(m) licenses, sublicenses, leases or subleases with respect to any assets granted to third Persons in the ordinary course of business; *provided* that the same do not in any material respect interfere with the business of the Borrower or its Subsidiaries;

(n) Liens which arise under Article 4 of the Uniform Commercial Code in any applicable jurisdictions on items in collection and documents and proceeds related thereto;

(o) precautionary filings of financing statements under the Uniform Commercial Code of any applicable jurisdictions in respect of operating leases or consignments entered into by the Borrower or its Subsidiaries in the ordinary course of business;

(p) Liens on any property or assets (other than any Equity Interests in any Person) existing at the time such property or assets is or are purchased or otherwise acquired by the Borrower or any of its Subsidiaries; *provided* that any such Lien was not created in contemplation of such purchase or acquisition and does not extend to any assets other than the assets so acquired by the Borrower or such Subsidiary; and *provided further* that any Indebtedness or other Obligations secured by such Liens shall otherwise be permitted under —Section 7.02;

(q) deposits to provide cash collateral on 103% of the sum of (x) the aggregate undrawn amount of the Existing Letters of Credit and (y) the aggregate of all unreimbursed payments made by the L/C Issuer pursuant to any Existing Letter of Credit, which deposits are provided pursuant to customary reimbursement agreements acceptable to the Borrower and the L/C Issuer;

(r) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(s) Liens incurred in connection with the purchase or shipping of goods or assets on the related goods or assets and proceeds thereof in favor of the seller or shipper of such goods or assets or pursuant to customary reservations or retentions of title arising in the ordinary course of business and in any case not securing Indebtedness;

(t) Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement in respect of a Permitted Acquisition that do not exceed in the aggregate at any time outstanding 5% of the total consideration for all Permitted Acquisitions then subject to letters of intent or purchase agreements;

(u) Liens in the nature of trustees' Liens granted pursuant to any indenture governing any Indebtedness permitted by —Section 7.01, in each case in favor of the trustee under such indenture and securing only obligations to pay compensation to such trustee, to reimburse its expenses and to indemnify it under the terms thereof;

(v) Liens on assets of Foreign Subsidiaries securing obligations of such Foreign Subsidiaries permitted hereunder;

(w) Liens securing up to \$1,000,000 of Indebtedness permitted under —Section 7.02(c)(xiii); and

(x) other Liens securing obligations (other than Indebtedness) outstanding in an aggregate principal amount not to exceed \$1,000,000; *provided*

that no such Lien shall extend to or cover any Collateral consisting of Equity Interests.

Section 7.02. *Indebtedness*. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) in the case of the Borrower:

(i) Indebtedness owed to a Subsidiary Guarantor, which Indebtedness shall (A) constitute Pledged Debt and (B) if evidenced by a promissory note, shall be pledged as security for the Obligations of the holder thereof under the Loan Documents to which such holder is a party and delivered to the Collateral Agent pursuant to the terms of the Security Agreement; and

(ii) Indebtedness owed to a Subsidiary that is not a Subsidiary Guarantor, *provided* that such Indebtedness is subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(b) in the case of any Subsidiary, Indebtedness owed to the Borrower or to another Subsidiary, *provided* that (i) in the case of any such Indebtedness owed to the Borrower or a Subsidiary Guarantor, such Indebtedness (1) shall constitute Pledged Debt and (2) if evidenced by a promissory note, shall be pledged as security for the Obligations of the holder thereof under the Loan Documents to which such holder is a party and delivered to the Collateral Agent pursuant to the terms of the Security Agreement, (ii) in the case of any such Indebtedness owed to a Subsidiary that is not a Subsidiary Guarantor, such Indebtedness is subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent, and (iii) in the case of any such Indebtedness of a Subsidiary that is not a Loan Party, such Indebtedness shall be subject to the limitations set forth in —Section 7.03(c)(ii)(B); and

(c) in the case of the Borrower and the Subsidiaries, without duplication:

(i) Indebtedness under the Loan Documents;

(ii) Indebtedness in respect of Swap Contracts designed to hedge against fluctuations in interest rates, currency exchange rates or commodity price risk, and not for speculative purposes, incurred in the ordinary course of business and consistent with prudent business practice;

(iii) Surviving Indebtedness, and any Permitted Refinancing Indebtedness in respect thereof;

(iv) Guarantees of the Borrower or any Subsidiary Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any of the Subsidiary Guarantors;

(v) Indebtedness in respect of Capitalized Leases, mortgage financings and purchase money obligations, in each case to finance the acquisition of property and within the limitations set forth in ~~—~~Section 7.01(i); *provided, however*, that the aggregate amount of all such Indebtedness shall not exceed \$5,000,000;

(vi) Indebtedness of any Person that becomes a Subsidiary after the date hereof in accordance with the terms of ~~—~~Section 7.03(i) which Indebtedness is existing at the time such Person becomes a Subsidiary of the Borrower (other than Indebtedness incurred solely in contemplation of such Person becoming a Subsidiary);

(vii) Indebtedness consisting of promissory notes issued by any Loan Party to current or former officers, directors and employees (or their estates, spouses or former spouses) of the Borrower or any Guarantor issued to purchase or redeem capital stock of ~~Holdings~~New TopCo permitted by ~~—~~Section 7.06;

(viii) Indebtedness that refinances the Indebtedness permitted under clause (c)(i) hereof; *provided* that such refinancing indebtedness (A) has an aggregate outstanding principal amount no greater than the aggregate principal amount of Indebtedness so refinanced, (B) has a weighted average life to maturity no shorter than the weighted average life to maturity of the Indebtedness being refinanced, (C) the maturity date of such refinancing Indebtedness is not earlier than 90 days after the Maturity Date, (D) is not secured by any Collateral and (E) is otherwise on terms that are not materially less favorable to the Borrower and its subsidiaries, taken as a whole, than the Indebtedness under the Loan Documents;

(ix) Indebtedness in respect of performance bonds and workers' compensation claims, in each case incurred in the ordinary course of business;

(x) Indebtedness consisting of netting arrangements and overdraft protections incurred in the ordinary course of business;

(xi) Indebtedness in an aggregate principal amount not to exceed ~~\$10,000,000~~3,000,000 that is (A) subordinated to the Obligations on terms customary at the time for subordinated debt instruments, (B) matures no earlier than six months after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the Maturity

Date of the Loans, (C) has terms and conditions (other than interest rate, redemption premiums and subordination terms), taken as a whole, that are not materially less favorable to Borrower than the terms and conditions customary at the time for subordinated debt instruments and (D) is incurred by Borrower or a Guarantor; *provided* that (1) both immediately prior and after giving effect to the incurrence thereof, (x) no Default shall exist or result therefrom and (y) the Borrower will be in compliance with the covenant set forth in Section 7.11 and *provided further that* a certificate of an Authorized Officer delivered to Administrative Agent at least 10 Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirements of this clause (xi) shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless Administrative Agent notifies the Borrower within 5 Business Days of receipt of such certificate that it disagrees with such determination;

(xii) Indebtedness of the Borrower and the Subsidiary Guarantors in respect of Permitted Subordinated Debt, so long as (A) the proceeds thereof are used (1) to repay or prepay Loans or (2) to fund Permitted Acquisitions and fees and expenses payable in connection therewith and (B) upon the issuances thereof, and the use of such proceeds in accordance with clause (A) above, the Borrower shall be in compliance with the covenant set forth in —Section 7.11, and any Permitted Refinancing Indebtedness in respect thereof; and

(xiii) Indebtedness in an aggregate principal amount not to exceed \$2,500,000 any time outstanding, incurred at a time when no Event of Default has occurred and is continuing, *provided* that no more than \$1,000,000 of such Indebtedness may be secured.

Section 7.03. *Investments.* Make or hold any Investments, except:

(a) Investments held by the Borrower or such Subsidiary in the form of cash or Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed \$500,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by ~~Holdings~~[the Holding Companies](#), the Borrower and the Subsidiaries existing on the Effective Date in the Borrower and its Subsidiaries and (ii) additional Investments by ~~Holdings~~[the Holding Companies](#),

the Borrower and its Subsidiaries in the Borrower and its Subsidiaries; *provided* that (A) if such Investment shall be in the form of an investment in Equity Interests, any such Equity Interests held by a Loan Party shall be pledged pursuant to the Security Agreement (subject to the limitation referred to in —Section 6.12 in the case of any Equity Interests in a Foreign Subsidiary) and (B) the aggregate amount of Investments made under this clause (c)—(ii) by Loan Parties in Subsidiaries that are not Subsidiary Guarantors shall not exceed \$500,000 at any time outstanding;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof in connection with the settlement of delinquent accounts in the ordinary course of business or from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by —Section 7.02 and Guarantees by the Borrower and the Subsidiaries of obligations (other than Indebtedness) of the Borrower and its Subsidiaries not prohibited hereunder;

(f) Investments existing on the date hereof and set forth on Schedule 7.03(f);

(g) Investments by the Borrower or any Subsidiary in Swap Contracts permitted under —Section 7.02(c)(ii);

(h) Investments consisting of intercompany debt permitted under —Section 7.02(a)(i), —7.02(a)(ii) or —7.02(b); and

(i) Permitted Acquisitions;

(j) loans and advances to ~~Holdings~~[the Holding Companies](#) in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof), Restricted Payments to the extent permitted to be made to ~~Holdings~~[the Holding Companies](#) in accordance with —Section 7.06;

(k) prepaid expenses or lease, utility and other similar deposits, in each case made in the ordinary course of business;

(l) promissory notes or other obligations of officers or other employees of such Loan Party or such Subsidiary acquired in the ordinary course of business in connection with such officers' or employees' acquisition of Equity Interests in such Loan Party or such Subsidiary (to the extent such acquisition is permitted under this Agreement), so long as no cash is advanced by the Borrower or any of its Subsidiaries in connection with such Investment;

(m) pledges and deposits permitted under —Section 7.01 and endorsements for collection or deposit in the ordinary course of business to the extent permitted under —Section 7.02(c)(xii);

(n) Investments by the Borrower or any Domestic Subsidiary consisting of the transfer of Equity Interests in a Foreign Subsidiary to another Foreign Subsidiary;

(o) Investments made or held by any Foreign Subsidiary in any other Foreign Subsidiary;

(p) Investments made as a result of the receipt of non-cash consideration from a sale, transfer or other disposition of any asset in compliance with —Section 7.05; and

(q) other Investments not exceeding \$10,000,000 in the aggregate in any fiscal year.

Section 7.04. *Fundamental Changes.* Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of the assets of the Borrower and the Subsidiaries (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge or consolidate with or into or may liquidate into (i) the Borrower; *provided* that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, *provided* that when any Subsidiary Guarantor is merging or consolidating with or liquidating into another Subsidiary, the continuing or surviving Person shall be a Subsidiary Guarantor;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; *provided* that, except in the case of an Investment permitted by —Section 7.03 or a Disposition permitted under —Section 7.05 (other than —Section 7.05(e)), a Subsidiary Guarantor may make such Disposal only (i) to the Borrower or another Subsidiary Guarantor or (ii) for an amount not less than the fair market value of such assets in a transaction not prohibited by —Section 7.05 (other than —Section 7.05(e));

(c) any Subsidiary which is not a Loan Party may dispose of all or substantially all its assets to the Borrower or another Subsidiary; and

(d) in connection with any acquisition permitted under —Section 7.03, any Subsidiary may merge into or consolidate with any other Person or permit any

other Person to merge into or consolidate with it; *provided* that, if the Subsidiary party to such merger or consolidation was, immediately prior thereto, a wholly-owned Subsidiary, the Person surviving such merger or consolidation shall be a wholly-owned Subsidiary, and the Person surviving any such merger involving a Subsidiary Guarantor shall be a Subsidiary Guarantor;

provided, however, that in each case, immediately after giving effect thereto, no Default shall have occurred and be continuing.

Section 7.05. *Dispositions.* Make any Disposition or enter into any agreement to make any Disposition or enter into any sale-leaseback transaction, except:

(a) Dispositions of obsolete, excess or worn out property or property no longer used in the business of the Borrower or its Subsidiaries, whether now or hereafter owned or leased, in the ordinary course of business of such Loan Party;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by any Subsidiary to the Borrower or to Subsidiary Guarantor or by the Borrower to a Subsidiary Guarantor;

(e) Dispositions permitted by ~~—~~Section 7.04;

(f) cancellations of any intercompany Indebtedness among the Loan Parties;

(g) the licensing of intellectual property to third Persons on customary terms in the ordinary course of business;

(h) (i) the sale, lease, sub-lease, license, sub-license or consignment of personal property of the Borrower or its Subsidiaries in the ordinary course of business and (ii) leases or subleases of real property for which rentals are paid on a periodic basis over the term thereof;

(i) the settlement or write-off of accounts receivable or sale, discount or compromise of overdue accounts receivable for collection in the ordinary course of business consistent with past practice;

(j) the sale, exchange or other disposition of cash and Cash Equivalents in the ordinary course of business;

(k) to the extent required by applicable law, the sale or other disposition of a nominal amount of Equity Interests in the Borrower or any Subsidiary in order to qualify members of the board of directors or equivalent governing body of such Subsidiary;

(l) the sale of the Downtown Campus Property, *provided* that at least 75% of the purchase price shall be paid to the Borrower in cash;

(m) Investments permitted by ~~—~~Section 7.03;

(n) Dispositions by the Borrower and its Subsidiaries not otherwise permitted under this ~~—~~Section 7.05; *provided* that (i) at the time of such Disposition, no Default shall exist or would result from such Disposition, and (ii) the aggregate net book value of all property Disposed of in reliance on this clause ~~—~~(n) in any fiscal year shall not exceed \$10,000,000 and, at least 75% of the purchase price for such asset shall be paid to the Borrower or such Subsidiary in cash; and

(o) sale-leaseback transactions with respect to real property, *provided* that the Net Cash Proceeds realized from any such transaction shall be applied in accordance with Section 2.05(b)(i);

provided, however, that any Disposition pursuant to ~~—~~Section 7.05(c), (h)~~—~~(ii) and ~~—~~(n) shall in any event be for fair market value; *provided, further,* that in the event any Disposition otherwise permitted under this ~~—~~Section 7.05 shall consist of a Disposition of Equity Interests in a Subsidiary, such Disposition shall in no event be of less than 100% of such Equity Interests, except in the case of a Disposition pursuant to ~~—~~Section 7.05(k).

Section 7.06. *Restricted Payments; Issuance of Equity Interests.* (a) Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(i) each Subsidiary may make Restricted Payments to the holders of its Equity Interests ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(ii) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(iii) for so long as the Borrower for U.S. federal income tax purposes is a member of a group that includes ~~Holdings~~[the Holding Companies](#) for filing consolidated returns (or if the Borrower is treated as a

partnership or disregarded entity for U.S. federal income tax purposes), the Borrower may declare and directly or indirectly pay cash dividends and distributions to ~~Holdings~~New Holdings II (which in turn may make distributions to New Holdings I, which in turn may make distributions to New TopCo) for the purpose of permitting ~~Holdings~~the Holding Companies to pay federal and state income taxes, franchise taxes, and other taxes, fees, and assessments to the extent attributable to the business of the Borrower and its Subsidiaries; *provided* that any refunds received by ~~Holdings~~the Holding Companies attributable to the Borrower or any of its Subsidiaries shall promptly be returned by ~~Holdings~~the Holding Companies to the Borrower through an equity contribution to the Borrower;

(iv) the Borrower may declare and directly or indirectly pay cash dividends and distributions to ~~Holdings~~New Holdings II (which in turn may make distributions to New Holdings I, which in turn may make distributions to New TopCo) for customary and reasonable out-of-pocket expenses, legal and accounting fees and expenses and overhead of ~~Holdings~~the Holding Companies incurred in the ordinary course of business to the extent attributable to the business of the Borrower and its Subsidiaries and in an aggregate amount not to exceed \$500,000 in any fiscal year;

(v) the Borrower may purchase (with cash or notes) Equity Interests in ~~Holdings~~New TopCo from former directors, officers or employees of ~~Holdings~~the Holding Companies, the Borrower or its Subsidiaries, their estates, spouses or former spouses in connection with the termination of such employee's or officer's employment (or such director's directorship) and the Borrower may make distributions to ~~Holdings~~the Holding Companies to effect such purchases and/or to make payments on any notes issued in connection with any such repurchase; *provided, however,* that (x) no such purchase or distribution and no payment on any such note shall be made if an Event of Default shall have occurred and be continuing, (ii) no such note shall require any payment if such payment or a distribution by the Borrower to make such payment is prohibited by the terms hereof and (y) the aggregate amount of all payments under this — Section 7.06(a)(v) (including payments in respect of any such purchase or any such notes or any such distributions to ~~Holdings~~New TopCo for such purposes) shall not exceed \$1,000,000 in any fiscal year (it being understood that any such amount not used in any fiscal year may be carried forward and used in subsequent fiscal years);

(vi) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may make distributions to ~~Holdings to enable Holdings~~New Holdings II (which in turn may make distributions to New Holdings I, which in turn may make distributions to

New TopCo) to enable the Holding Companies to pay directors' fees, expenses and indemnities owing to directors of ~~Holdings~~the Holding Companies; and

(vii) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may make additional Restricted Payments in an aggregate amount not to exceed \$500,000;

(b) In the case of the Borrower, issue or sell any of its Equity Interests or accept any capital contributions in respect of its Equity Interests, or in the case of a Subsidiary, issue or sell any of its common or preferred Equity Interests or accept any capital contributions in respect of its common or preferred Equity Interests, except that:

(i) the Borrower may (x) issue shares of its common stock to New Holdings II, *provided* that such shares are pledged to the Collateral Agent pursuant to the terms of the Security Agreement, and (y) accept capital contributions from New Holdings II in respect of its common stock; and

(ii) any Subsidiary may (x) issue shares of its Equity Interests to the Borrower or any other Subsidiary, *provided* that any Domestic Subsidiary shall only issue such shares to the Borrower or another Domestic Subsidiary, and (y) any Subsidiary may issue shares of its Equity Interests to its equity holders in the proportion of such interests held by such equity holders prior to such issuance and may accept capital contributions from its equity holders on the same basis.

To the extent that the Borrower or its Subsidiaries are permitted to make any Restricted Payments pursuant to this —Section 7.06, the same may be made as a loan or advance to the recipient thereof, and in such case the amount of such loan or advance so made shall reduce the amount of Restricted Payments that may be made by the Borrower and its Subsidiaries in respect thereof.

Section 7.07. *Change in Nature of Business.* Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business reasonably related, incidental or complimentary thereto.

Section 7.08. *Holding Company Status.* With respect to ~~Holdings~~any Holding Company, engage in any business or activity other than (i) (A) in the case of New TopCo, the ownership of all outstanding Equity Interests in New Holdings I, (B) in the case of New Holdings I, the ownership of all outstanding Equity Interests in New Holdings II and (C) in the case of New Holdings II, the ownership of all outstanding Equity Interests in the Borrower, (ii) maintaining its corporate

existence, (iii) in the case of New Topco, participating in tax, accounting and other administrative activities as the parent of the consolidated group of companies, including the Loan Parties, (iv) the performance of obligations under the Loan Documents to which it is a party, (v) performing any act or obligation permitted by the ~~Holdings~~Holding Company Guaranty, (vi) the receipt of Restricted Payments permitted under —Section 7.06 and the use thereof as contemplated therein, (vii) the issuance and sale of its Equity Interests, (viii) the consummation of the Restructuring Transactions, (ix) the consummation of the Reorganization Plan and compliance with any obligation, or the exercise of any right, thereunder and (~~ix~~) activities incidental to the businesses or activities described in clauses (i)-(~~viii~~ix) above.

Section 7.09. *Transactions With Affiliates*. Enter into any transaction of any kind with any Affiliate of the Borrower or ~~Holdings~~any Holding Company, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; *provided* that the foregoing restriction shall not apply to (a) transactions between or among the Borrower and any of the Subsidiary Guarantors or between and among any Subsidiary Guarantors, (b) transactions, arrangements, fee reimbursements and indemnities specifically and expressly permitted between or among such parties under this Agreement or the Reorganization Plan, (c) reasonable compensation and indemnities to, and employment arrangements with, officers and directors, (d) the consummation of the Transaction, the Restructuring Transactions and the Reorganization Plan, (e) Investments by ~~Holdings~~the Holding Companies in the Borrower and Restricted Payments permitted by —Section 7.06, (f) Investments by the Borrower or any Subsidiary in the Borrower or any Subsidiary permitted by —Section 7.03, and (g) Investments permitted by —Section 7.03(b), —(j) and —(l).

Section 7.10. *Burdensome Agreements*. Enter into or permit to exist any Contractual Obligation (other than this Agreement and any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor, to make intercompany loans or advances to the Borrower or any Guarantor or to repay such loans or advances, or to otherwise transfer property to or invest in the Borrower or any Guarantor, except for any agreement in effect (A) on the date hereof or (B) at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower, (ii) of any Subsidiary to Guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person securing the Obligations; *provided, however*, that this clause —(iii) shall not prohibit (A) any such limitation imposed by law or incurred or provided in favor of any holder of Indebtedness permitted under —Section

7.02(c)(iv) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness, (B) customary anti-assignment provisions in contracts restricting the assignment thereof or in contracts for the Disposition of any assets or any Subsidiary, *provided* that the restrictions in any such Disposition contract shall apply only to the assets or Subsidiary that is to be Disposed of and such Disposition is permitted hereunder, (C) provisions in leases of real property that prohibit mortgages or pledges of the lessee's interest under such lease, or (D) any such limitation imposed on any Subsidiary that is not a Loan Party by the terms of any Indebtedness permitted hereunder if such limitation applies only to the assets or property securing such Indebtedness; or (b) requires the grant by a Loan Party of a Lien to secure an obligation of such Loan Party if a Lien is granted to secure any Obligation of such Loan Party.

Section 7.11. *Financial Covenant.*

Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as of the last day of any fiscal quarter of the Borrower set forth below to be less than the ratio set forth below opposite fiscal quarter:

Fiscal Quarter	Minimum Fixed Charge Coverage Ratio
September 30, 2012	1.0:1.0
December 31, 2012	1.0:1.0
March 30, 2013	1.0:1.0
June 30, 2013	1.0:1.0
September 30, 2013	1.0:1.0
December 31, 2013	1.0:1.0
March 30, 2014	1.0:1.0
June 30, 2014	1.0:1.0
September 30, 2014	1.0:1.0

Section 7.12. *[Reserved].*

Section 7.13. *Amendments Of Organization Documents.* Amend any of its Organization Documents in a manner materially adverse to the Lenders.

Section 7.14. *Accounting Changes.* Make any change in its (a) accounting policies or reporting practices, except as required or permitted by generally accepted accounting principles, or (b) fiscal year.

Section 7.15. *Prepayments, Amendments, Etc. Of Indebtedness.* Except with the proceeds of any Permitted Refinancing Indebtedness in respect thereof, directly or indirectly make any voluntary payment or prepayment of principal of, or make any payment of interest (other than regularly scheduled payments of interest) or premium on, or any payment or prepayment which would violate the subordination provisions of, any Permitted Subordinated Debt Documents, or redeem, purchase or defease any Permitted Subordinated Debt.

Section 7.16. *Amendments Of Permitted Subordinated Debt Documents.* Amend, supplement, amend and restate, waive or otherwise modify any agreement, instrument or other document evidencing or relating to any Permitted Subordinated Debt (“**Permitted Subordinated Debt Documents**”), in each case in a manner which would (a) materially adversely affect the rights or remedies of the Lenders, or the Borrower’s or any other Loan Party’s ability to perform its Obligations, under this Agreement or any other Loan Document, or materially increase the obligations of ~~Holdings~~[any Holding Company](#), the Borrower or any other Subsidiary thereunder or confer any additional rights in favor of the holders of any Permitted Subordinated Debt (or a trustee or other representative on their behalf) which would be adverse to any Loan Party or Lender, (b) increase the principal amount of, or increase the interest rate on, or add or increase any fee with respect to, any Permitted Subordinated Debt, advance any dates upon which payments of principal or interest are due thereon or change the covenants with respect thereto in a manner which, taken as a whole, is materially more restrictive to the Borrower or any of the Subsidiaries, or (c) change the subordination provisions thereof (including any default or conditions to an event of default relating thereto), if (in the case of this clause —(c)), the effect of such amendment or change, individually or together with all other amendments or changes made, is to increase the obligations of the obligor thereunder or to confer any additional rights on the holders of such Permitted Subordinated Debt (or a trustee or other representative on their behalf), or (d) cause the Indebtedness evidenced thereby to cease to constitute Permitted Subordinated Debt as defined herein.

Section 7.17. *Partnerships, Etc.* Become a general partner in any general or limited partnership or joint venture, *provided* that any Subsidiary of the Borrower may become such a general partner if (a) such partnership or joint venture constitutes a wholly-owned Subsidiary, or (b) such Subsidiary is a corporation or limited liability company that has no material assets other than such general partnership interest and the Borrower has taken reasonable and prudent actions to maintain the separate existence of such Subsidiary in order to minimize the risk that ~~Holdings~~[any Holding Company](#), the Borrower or any other Subsidiary of the Borrower may be deemed to have liability or otherwise be responsible for the obligations or liabilities of such partnership or joint venture.

Section 7.18. *Formation of Subsidiaries.* Organize or invest in any new Subsidiary except as permitted under —Section 7.03.

ARTICLE 8
EVENTS OF DEFAULT AND REMEDIES

Section 8.01. *Events of Default.* Any of the following shall constitute an Event of Default:

(a) *Non-Payment.* The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three Business Days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) *Specific Covenants.* The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(a), 6.05(a) (with respect to the Borrower only), or ~~—~~Article 7; or

(c) *Other Defaults.* Any Loan Party fails to perform or observe any other covenant or agreement (not specified in ~~—~~Section 8.01(a) or ~~—~~(b) above) contained in the Fee Letter or any Loan Document on its part to be performed or observed and such failure continues for 30 days after notice thereof shall have been given to the Borrower by the Administrative Agent or the Required Lenders; or

(d) *Representations and Warranties.* Any representation, warranty or certification made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) *Cross-Default.* (i) Any Loan Party or any of the Subsidiaries (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such payment is not made within any applicable grace period, in respect of any Indebtedness (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, *provided* that this clause (i)~~—~~(B) shall not apply to secured Indebtedness of a Loan Party or a Subsidiary that becomes due upon the sale or transfer by such Loan Party or Subsidiary of the property or assets securing such

Indebtedness; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrower or any Subsidiary is an Affected Party (as defined in such Swap Contract) and, in either event, the Swap Termination Value owed by the Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) *Insolvency Proceedings, Etc.* Any Loan Party or any of the Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) *Inability to Pay Debts; Attachment.* (i) Any Loan Party or any of the Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) *Judgments.* There is entered against any Loan Party or any of the Subsidiaries (i) a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) *ERISA.* An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party in an aggregate amount in excess of the Threshold Amount; or

(j) *Invalidity of Loan Documents.* Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in writing the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) *Change of Control.* There occurs any Change of Control; or

(l) *Collateral Document.* Any Collateral Document after delivery thereof pursuant to Sections ~~4.01~~, ~~6.12~~, ~~6.13~~ or 6.18 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority (subject to Permitted Liens and except to the extent contemplated thereby) lien on and security interest in any material portion of the Collateral purported to be covered thereby; or any Loan Party contests in any manner the validity, perfection or priority of any lien or security interest in any material portion of the Collateral purported to be covered thereby.

Section 8.02. *Remedies Upon Event Of Default.* If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments shall be terminated;

(b) declare any or all of the unpaid principal amount of all outstanding Loans, any or all interest accrued and unpaid thereon, and any or all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, whereupon the same shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(c) exercise on behalf of itself, the other Agents and the Lenders all rights and remedies available to it, the other Agents and the Lenders under the Loan Documents and applicable law;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case, without further act of any Agent or any Lender.

Section 8.03. *Application Of Funds.* After the exercise of remedies provided for in —Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Agents in their capacities as such ratably among them in proportion to the amounts described in this clause First payable to them;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and obligations under Secured Hedge Agreements, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents that are then due and payable to the Agents and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Agents and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full (excluding, for this purpose, any Unaccrued Indemnity Claims), to the Borrower or as otherwise required by Law.

ARTICLE 9 ADMINISTRATIVE AGENT

Section 9.01. *Authorization And Action.* Each Lender (in its capacity as a Lender and on behalf of itself and its Affiliates as potential Hedge Banks) hereby appoints and authorizes each Agent to take such action as agent on its behalf and to

exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to such Agent by the terms hereof and thereof, together with such powers and discretion as are reasonably incidental thereto. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of the Notes), no Agent shall be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or, if required hereby, all Lenders), and such instructions shall be binding upon all Lenders and all holders of Notes; *provided, however*, that no Agent shall be required to take any action that exposes such Agent to personal liability or that is contrary to this Agreement or applicable law. Each Agent agrees to give to each Lender prompt notice of each notice given to it by the Borrower pursuant to the terms of this Agreement.

Section 9.02. *Agent's Reliance, Etc.* Neither any Agent nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with the Loan Documents, except for its or their own gross negligence or willful misconduct. Without limitation of the generality of the foregoing, each Agent: (a) may consult with legal counsel (including counsel for any Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (b) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations (whether written or oral) made in or in connection with the Loan Documents; (c) shall not have any duty to ascertain or to inquire as to the performance, observance or satisfaction of any of the terms, covenants or conditions of any Loan Document on the part of any Loan Party or the existence at any time of any Default under the Loan Documents or to inspect the property (including the books and records) of any Loan Party; (d) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, any Loan Document or any other instrument or document furnished pursuant thereto; and (e) shall incur no liability under or in respect of any Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopier, electronic mail or Internet or intranet posting or other distribution) believed by it to be genuine and signed or sent by the proper party or parties. Without limitation on any other provision hereof, neither Agent shall be deemed to have notice or knowledge of an Event of Default unless written notice thereof has been received from the Borrower or any Lender.

Section 9.03. *Credit Suisse and Affiliates.* With respect to its Commitments, the Loans made by it and the Notes issued to it, if any, Credit Suisse shall have the same rights and powers under the Loan Documents as any other

Lender and may exercise the same as though it were not an Agent; and the term “Lender” shall, unless otherwise expressly indicated, include Credit Suisse in its individual capacity. Credit Suisse and its affiliates may accept deposits from, lend money to, act as trustee under indentures of, accept investment banking engagements from and generally engage in any kind of business with, any Loan Party, any Subsidiary of any Loan Party and any Person that may do business with or own securities of any Loan Party or any such Subsidiary, all as if Credit Suisse was not an Agent and without any duty to account therefor to the Lenders. No Agent shall have any duty to disclose any information obtained or received by it or any of its Affiliates relating to any Loan Party or any Subsidiary of any Loan Party to the extent such information was obtained or received in any capacity other than as such Agent.

Section 9.04. *Lender Credit Decision.* Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on the financial statements referred to in —Section 6.01 and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

Section 9.05. *Indemnification Of Agents.* (a) Each Lender severally agrees to indemnify each Agent or any Related Party (in each case, to the extent not reimbursed by the Borrower but without limiting the Borrower’s obligation to do so) from and against such Lender’s Applicable Percentage of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against such Agent or any Related Party in any way relating to or arising out of the Loan Documents or any action taken or omitted by such Agent or any Related Party under the Loan Documents (collectively, the “**Indemnified Costs**”); *provided, however*, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent’s or any Related Party’s gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse each Agent or any Related Party promptly upon demand for its Applicable Percentage of any costs and expenses (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) (including, without limitation, reasonable fees and expenses of counsel) payable by the Borrower under —Section 10.04, to the extent that such Agent or any Related Party is not promptly reimbursed for such costs and expenses by the Borrower. In the case of any investigation, litigation or proceeding giving rise to any

Indemnified Costs, this —Section 9.05 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. The obligations of the Lenders under this subsection (a) are subject to the provisions of —Section 2.12(d).

(b) The failure of any Lender to reimburse any Agent or any Related Party, as the case may be, promptly upon demand for its Applicable Percentage of any amount required to be paid by the Lenders to such Agent or any Related Party, as the case may be, as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse such Agent or Related Party, as the case may be, for its Applicable Percentage of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse such Agent or Related Party, as the case may be, for such other Lender's Applicable Percentage of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this —Section 9.05 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

Section 9.06. *Successor Agents.* Any Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor Agent (which shall be a commercial bank or trust company organized under the laws of, or a branch of a commercial bank or trust company located in, the United States or any State thereof and having (or the parent of which shall have) a combined capital and surplus of at least \$500,000,000 and shall, unless an Event of Default has occurred and is continuing at the time of such appointment, shall be reasonably acceptable to the Borrower). If no successor Agent (x) shall have been so appointed by the Required Lenders or (y) shall have accepted such appointment, in each case within 30 days after the retiring Agent's giving of notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent, which shall meet the qualifications set forth above or otherwise be reasonably acceptable to the Borrower shall, unless an Event of Default shall have occurred and is continuing, shall be reasonably acceptable to the Borrower. Upon the acceptance of any appointment as Agent hereunder by a successor Agent and, in the case of a successor Collateral Agent, upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, such successor Agent shall succeed to and become vested with all the rights, powers, discretion, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under the Loan Documents. After any retiring Agent's resignation hereunder as Agent shall have become effective, the provisions of this Article IX shall inure to

its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

Section 9.07. *[Reserved]*.

Section 9.08. *Administrative Agent May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Sections ~~—2.09~~ and ~~—10.04~~) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Agents under Sections ~~—2.09~~ and ~~—10.04~~.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.09. *Collateral and Guaranty Matters.* The Lenders irrevocably authorize the Collateral Agent and the Administrative Agent, at their option and in their discretion,

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations not yet accrued and payable), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, (iii) that is owned by any Guarantor whose Guaranty is released pursuant to ~~—~~Section 9.09(b) or (iv) subject to ~~—~~Section 10.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to release any Guarantor from its obligations under the applicable Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and

(c) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by ~~—~~Section 7.01(i).

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders (or, if necessary, all Lenders) will confirm in writing the authority of the Agents to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the applicable Guaranty pursuant to this ~~—~~Section 9.09. In each case as specified in this ~~—~~Section 9.09, the Administrative Agent and the Collateral Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to release such Guarantor from its obligations under the applicable Guaranty, in each case in accordance with the terms of the Loan Documents and this ~~—~~Section 9.09.

Section 9.10 *Withholding Taxes*. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

ARTICLE 10
MISCELLANEOUS

Section 10.01. *Amendments, Etc.* No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent or the Collateral Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to ~~—~~Section 8.02) without the written consent of such Lender;

(b) postpone any date scheduled for any payment of principal, interest or fees under ~~—~~Section 2.07, ~~—~~2.08 or ~~—~~2.09 without the written consent of each Lender directly affected thereby;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan, or, any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of the Required Lenders shall be necessary to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate and such waiver shall not constitute a reduction of the rate of interest hereunder;

(d) change any provision of this ~~—~~Section 10.01 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(e) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) release all or substantially all of the value of the ~~Holdings~~ Holding Company Guaranty or the Subsidiary Guaranty, without the written consent of each Lender;

(g) change the order of application of any prepayment of Loans between the Facilities from the application thereof set forth in the applicable provisions of Section 2.05(b) or in any other manner that materially and adversely affects the Lenders under the Tranche A Facility or the Tranche B Facility without

the written consent of Lenders holding more than 50% of the aggregate Outstanding Amount with respect to any Facility adversely affected thereby;

(h) applies by its express terms to the interests, rights or obligations of the Tranche A Lenders in a manner substantially different and adverse from any application of such amendment, waiver or consent on the Tranche B Lenders, unless consented to by the Required Tranche A Lenders; or

~~(i) applies by its express terms to the interests, rights or obligations of the Tranche B Lenders in a manner substantially different and adverse from any application of such amendment, waiver or consent on the Tranche A Lenders, unless consented to by Required Tranche B Lenders;~~

(i) applies by its express terms to the interests, rights or obligations of the Tranche B Lenders in a manner substantially different and adverse from any application of such amendment, waiver or consent on the Tranche A Lenders, unless consented to by Required Tranche B Lenders; and *provided further* that, without limiting any requirement that the same be signed or executed by the Borrower or any other applicable Loan Party, (i) no amendment, waiver or consent shall, unless in writing and signed by an Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, such Agent under this Agreement or any other Loan Document; and (ii) —Section 10.06(i) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders and the Borrower (a) to add one or more additional credit facilities (including a revolving credit facility) to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Obligations and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders (other than for purposes of the amendment adding such credit facilities).

Section 10.02. *Notices And Other Communications; Facsimile Copies.* (a) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by

certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) *Electronic Communications.* Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *Change of Address, Etc.* Each of the Borrower and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent.

(d) *Reliance by Administrative Agent and Lenders.* The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03. *No Waiver; Cumulative Remedies.* No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 10.04. *Expenses; Indemnity; Damage Waiver.* (a) *Costs and Expenses.* The Borrower agrees to pay on demand (i) all out-of-pocket costs and expenses of each Agent and its Affiliates in connection with the preparation, execution, delivery, administration, modification and amendment of, or any consent or waiver under, the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated) (including, without limitation, (A) all due diligence, collateral review, arrangement, syndication, transportation, computer, duplication, appraisal, audit, insurance, consultant, search, filing and recording fees and expenses and (B) the reasonable fees and expenses of counsel for the Agents with respect to advising such Agent as to its rights and responsibilities and ongoing administration of the Loan Documents, or the perfection, protection, interpretation or preservation of rights or interests, under the Loan Documents, with respect to negotiations with any Loan Party or with other creditors of any Loan Party or any of the Subsidiaries (including, without limitation, with respect to any negotiations arising out of any Default) and with

respect to presenting claims in or otherwise participating in or monitoring any bankruptcy, insolvency or other similar proceeding involving creditors' rights generally and any proceeding ancillary thereto) and (ii) all costs and expenses of each Agent and each Lender in connection with the enforcement or protection of its rights in connection with the Loan Documents, whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally (including, without limitation, the reasonable fees and expenses of counsel for each Agent and each Lender with respect thereto); *provided* that the Borrower shall not be required to reimburse the legal fees and expenses of more than one outside counsel to (x) the Agents (in addition to special counsel and up to one local counsel in each applicable local jurisdiction) and (y) the Lenders, unless representation of all such indemnified persons would be inappropriate due to the existence of an actual or potential conflict of interest. The Borrower further agrees to pay any stamp or other taxes that may be payable in connection with the execution or delivery of any Loan Document.

(b) *Indemnification by the Borrower.* The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of (A) this Agreement, (B) any other Loan Document or (C) any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of the Subsidiaries, or any Environmental Liability of the Borrower or any of its Subsidiaries other than losses, claims, damages, liabilities and related expenses arising from a release of Hazardous Materials or an Environmental Liability (except releases of Hazardous Materials or Environmental Liabilities actually caused by ~~Holdings~~[any Holding Company](#), the Borrower or any of the Subsidiaries) which first occurs or arises after title to the relevant real property or facility is vested in any Agent or Lender or other party after the completion of foreclosure proceedings or the granting of a deed in lieu of foreclosure or similar transfer of title, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated, in all cases, whether or not caused by or arising, in whole or in

part, out of the comparative, contributory or sole negligence of the Indemnitee; *provided* that such indemnity shall, as to any Indemnitee, be available only in connection with or relation to (x) the role of such Indemnitee as Arranger, Administrative Agent, Collateral Agent or Lender or any similar capacity, as the case may be (each such role or capacity, a “**Specified Capacity**”) and (y) the status of such Indemnitee in its Specified Capacity); *provided, further*, that (A) such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final, non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee (and, upon any such determination, any indemnification payments with respect to such losses, claims, damages, liabilities or related costs and expenses previously received by such Indemnitee shall be subject to reimbursement by such Indemnitee), and (B) in any litigation between any Loan Party and any Indemnitee in which such Loan Party is determined to be the prevailing party pursuant to a final, non-appealable judgment of a court of competent jurisdiction, such indemnity shall not apply to expenses incurred by such Indemnitee in such litigation or to any amounts that such Indemnitee is required to pay to such Loan Party pursuant to a final, non-appealable judgment of a court of competent jurisdiction.

(c) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby or any Loan. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(d) If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it under any Loan Document, including, without limitation, fees and expenses of counsel and indemnities, such amount may be paid on behalf of such Loan Party by the Administrative Agent or any Lender, in its sole discretion.

(e) *Payments.* All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) *Survival.* The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the

termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

Section 10.05. *Payments Set Aside.* To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the fullest extent permitted under applicable law, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.06. *Successors and Assigns.* (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of [Holdingsany Holding Company](#), the Borrower, the Administrative Agent, the Collateral Agent or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) Each Lender may assign to one or more assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it); *provided, however*, that (i) such assignment must be consented to by the Administrative Agent (other than in respect of — Section 10.06(b)(i)(B)) and the Borrower (which consent, in either case, may not be unreasonably withheld or delayed), *provided* that the consent of the Borrower shall not be required to any such assignment (A) if an Event of Default has occurred and is continuing or (B) to a Lender or an Affiliate of a Lender or an Approved Fund, (ii) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, the amount of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 (or, if less, the entire remaining amount of such Lender's Loan) and shall be in an amount that is an integral multiple of \$1,000,000 (or the entire remaining amount of such Lender's Loan), *provided, however*, that concurrent

assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met, (iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent), (iv) the assignee, if it shall not be a Lender immediately prior to the assignment, shall deliver to the Administrative Agent an Administrative Questionnaire and the applicable tax forms, (v) the assignee shall not be the Borrower or an Affiliate or Subsidiary of the Borrower. Upon acceptance and recording pursuant to subsection (e) of this ~~Section 10.06~~, from and after the effective date specified in each Assignment and Assumption, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections ~~3.01~~, ~~3.04~~ and ~~10.04~~, as well as to any fees accrued for its account and not yet paid). Notwithstanding any other provision of this Agreement, if at any time that no Event of Default has occurred and is continuing, a Lender proposes to assign all or any portion of its rights hereunder to any Person that is not a Lender, an Affiliate of a Lender or an Approved Fund and is not a commercial bank, finance company, insurance company, financial institution, or other entity that is or will be engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course (a "**Non-Financial Entity**"), then such Lender shall notify the Administrative Agent and the Borrower in writing that such proposed assignee is a Non-Financial Entity. Prior to granting its approval to such proposed assignment, the Administrative Agent shall notify the Borrower in writing of the identity of such Non-Financial Entity. No assignment shall be made to any Non-Financial Entity that is designated on a good faith basis by the Borrower, within three Business Days after receipt by the Borrower of notification from the Administrative Agent pursuant to the immediately preceding sentence, as a direct or indirect competitor of the Borrower or any Subsidiary of the Borrower. The Administrative Agent shall in no event be liable for the failure of a Lender to notify the Administrative Agent that any proposed assignee is a Non-Financial Entity. The Administrative Agent shall in no event be liable for the failure to notify the Borrower of an assignment of a Loan pursuant to clause (ii) hereof and failure

by the Administrative Agent to provide such notice shall in no way affect the validity or effectiveness of such assignment.

(c) By executing and delivering an Assignment and Assumption, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that the outstanding balances of its Loans, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Assumption, (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Assumption; (iv) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in ~~in~~ Section 5.05 or delivered pursuant to ~~in~~ Section 6.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Administrative Agent and the Collateral Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in The City of New York a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders and principal amount of the Loans owing to each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent, the Collateral Agent and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms

hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and the Collateral Agent, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, an Administrative Questionnaire and applicable tax forms completed in respect of the assignee (unless the assignee shall already be a Lender hereunder) and the written consent of the Borrower (to the extent required) and the Administrative Agent to such assignment, the Administrative Agent shall promptly (i) accept such Assignment and Assumption and (ii) record the information contained therein in the Register. No assignment (whether or not evidenced by a Note) shall be effective unless it has been recorded in the Register as provided in this subsection (e).

(f) Each Lender may without the consent of the Borrower or the Administrative Agent sell participations to one or more banks or other entities in all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans); *provided, however*, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other entities shall be entitled to the benefit of the cost protection provisions contained in Sections ~~—3.01~~ and ~~—3.05~~ to the same extent as if they were Lenders (but, with respect to any particular participant, to no greater extent than the Lender that sold the participation to such participant) and (iv) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loans and to approve any amendment, modification or waiver of any provision of this Agreement (other than amendments, modifications or waivers decreasing any fees payable hereunder or the amount of principal of or the rate at which interest is payable on the Loans, extending any scheduled principal payment date or date fixed for the payment of interest on the Loans, in each case in which such participant has a participating interest, or releasing all or substantially all of the value of the Holding [Company](#) Guaranty or the Subsidiary Guaranty or all or substantially all of the Collateral).

(g) Any Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this ~~—~~Section 10.06, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; *provided* that, prior to any such disclosure of Information, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary

exceptions) to preserve the confidentiality of such Information on terms no less restrictive than those applicable to the Lenders pursuant to —Section 10.07.

(h) Any Lender may at any time, without the consent of or notice to any Person, assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender; *provided* that no such assignment shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, any Lender (a “**Granting Lender**”) may grant to a special purpose funding vehicle (an “**SPC**”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this —Section 10.06, any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose any information (on a confidential basis in the case of any Information) relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

(j) The Borrower shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent and each Lender, and any attempted assignment without such consent shall be null and void.

(k) In the event (i) any Lender delivers a certificate requesting compensation pursuant to —Section 3.01, (ii) any Lender delivers a notice described in —Section 3.02, (iii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority on account of any Lender pursuant to —Section 3.04, (iv) any Lender becomes a Defaulting Lender or (v) any Lender does not consent to a proposed amendment, modification or waiver of this Agreement requested by the Borrower which requires the consent of all of the Lenders or all of the Lenders under any Facility to become effective (and which is approved by at least the Required Lenders), the Borrower may, at its sole expense and effort (including with respect to the processing and recordation fee referred to in —Section 10.06(b)), upon notice to such Lender and the Administrative Agent, require such Lender to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in —Section 10.06), all of its interests, rights and obligations under this Agreement to an assignee reasonably acceptable to the Borrower, such acceptance not to be unreasonably withheld or delayed, that shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (x) such assignment shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority having jurisdiction, (y) solely with respect to replacements of Lenders pursuant to clause (i), (ii) or (iii) of this —Section 10.06(k), the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, and (z) the Borrower or such assignee shall have paid to the affected Lender in immediately available funds an amount equal to the sum of the principal of and interest accrued to the date of such payment on the outstanding Loans of such Lender, plus all fees and other amounts accrued for the account of such Lender hereunder (including any amounts under —Section 3.01 and —Section 3.04); *provided further* that, in the case of clause (i), (ii) or (iii) above, if prior to any such transfer and assignment the circumstances or event that resulted in such Lender's claim for compensation under —Section 3.01 or notice under —Section 3.02 or the amounts paid pursuant to —Section 3.04, as the case may be, cease to cause such Lender to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in —Section 3.02, or cease to result in amounts being payable under —Section 3.04, as the case may be (including as a result of any action taken by such Lender pursuant to —Section 3.06), or if such Lender shall waive its right to claim further compensation under —Section 3.01 in respect of such circumstances or event or shall withdraw its notice under —Section 3.02 or shall waive its right to further payments under —Section 3.04 in respect of such circumstances or event, as the case may be, then such Lender shall not thereafter be required to make any such transfer and assignment hereunder. In connection with any such replacement, if the replaced Lender does not execute and deliver to the Administrative Agent a duly

completed Assignment and Assumption reflecting such replacement within five Business Days of the date on which the replacement Lender executes and delivers such Assignment and Assumption to the replaced Lender, then such replaced Lender shall be deemed to have executed and delivered such Assignment and Assumption. This ~~—~~Section 10.06(k) shall supersede any provision of ~~—~~Section 2.13 to the contrary.

Section 10.07. *Treatment of Certain Information; Confidentiality.* Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and to its Affiliates' respective partners, directors, officers, employees, agents, advisors, trustees and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process (in which case such Person agrees, to the extent permitted by applicable law or such compulsory legal process, to use commercially reasonable efforts to inform the Borrower thereof prior to such disclosure); (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder; (f) subject to an agreement containing provisions substantially the same as those of this ~~—~~Section 10.07, to (i) any permitted assignee of or participant in, or any prospective permitted assignee of or participant in, any of its rights or obligations under this Agreement or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of the Loan Parties; (g) with the consent of the Borrower; (h) to the extent such Information (i) is or becomes publicly available other than as a result of a breach of this ~~—~~Section 10.07 or (ii) is or becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower; (i) to any state, Federal or foreign authority or examiner (including the National Association of Insurance Commissioners or any other similar organization) regulating any Lender; or (j)(i) to an investor or prospective investor in securities issued by an Approved Fund of any Lender that also agrees that Information shall be used solely for the purpose of evaluating an investment in such securities issued by an Approved Fund of any Lender, (ii) to a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in securities issued by an Approved Fund of any Lender in connection with the administration, servicing and reporting on the assets serving as collateral for securities issued by such Approved Fund, or (iii) to a nationally recognized rating agency that requires access to information regarding the Loan Parties, the Loans and the Loan Documents in connection with ratings issued in respect of securities issued by an Approved Fund of any Lender (it

being understood that, prior to any such disclosure, such parties shall undertake to preserve the confidentiality of any Information relating to the Loan Parties, the Loans and the Loan Documents received by it from such Lender). In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and nonconfidential information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments, and the Loans. For the purposes of this —Section 10.07, “**Information**” means all information received from any Loan Party relating to any Loan Party or its business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party. Any Person required to maintain the confidentiality of Information as provided in this —Section 10.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. The Borrower shall have the right to approve any public advertisement or other public notice issued or placed by the Agents with respect to the Loan Documents and the transactions thereunder, which approval shall not be unreasonably withheld. Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative or other agent of such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure, except that (a) tax treatment and tax structure shall not include the identity of any existing or future party (or any affiliate of such party) to this Agreement, and (b) no party shall disclose any information relating to such tax treatment and tax structure to the extent nondisclosure is reasonably necessary in order to comply with applicable securities laws. For this purpose, the tax treatment of the transactions contemplated by this Agreement is the purported or claimed U.S. federal income tax treatment of such transactions and the tax structure of such transactions is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of such transactions.

Section 10.08. *Right of Setoff.* Upon (a) the occurrence and during the continuance of an Event of Default under —Section 8.01(a), (b) an exercise or remedies under —Section 8.02(b) or (c) amounts becoming due and payable pursuant to the proviso to —Section 8.02, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held (other than deposits in accounts that have been specifically designated to such Lender as payroll accounts or trust accounts) and other obligations (in whatever currency) at any time owing by such Lender or any such

Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party then due under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and its Affiliates under this —Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09. *Interest Rate Limitation.* Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.10. *Release of Collateral.* Upon the sale of any item of Collateral of any Loan Party (including, without limitation, as a result of the sale, in accordance with the terms of the Loan Documents, of a Subsidiary Guarantor that owns such Collateral but excluding Dispositions among Loan Parties) in accordance with the terms of the Loan Documents, the security interest created in such item of Collateral under the Collateral Documents shall be automatically released and the Collateral Agent will, at the Borrower’s expense, execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents in accordance with the terms of the Loan Documents and, if applicable, the release of such Subsidiary Guarantor from its obligations under the Subsidiary Guaranty. Upon the payment in full of all Obligations (other than obligations under any Secured Hedge Agreements, but excluding for this purpose any Unaccrued Indemnity Claims) and the termination of all of the Commitments and all other obligations of the Lenders hereunder, the Liens created by the Loan Documents shall be automatically terminated and the Agents shall take such action as may be reasonably required by

the Borrower, at the expense of the Borrower, to evidence the release the Liens created by the Loan Documents.

Section 10.11. *Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in ~~—~~Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or PDF (or similar file) by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.12. *Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default at the time of making any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 10.13. *Severability.* If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.14. *USA PATRIOT Act Notice.* Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Patriot Act**”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other

information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Patriot Act.

Section 10.15. *Governing Law; Jurisdiction; Etc.*

(a) *Governing Law.* THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) *Submission to Jurisdiction.* **THE BORROWER AND EACH OTHER LOAN PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF ANY NEW YORK STATE COURT OR FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY THEREOF (COLLECTIVELY, “NEW YORK COURTS”), IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS TO WHICH IT IS A PARTY, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY LAW, IN ANY SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT ANY PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, THE NOTES OR THE OTHER LOAN DOCUMENTS TO WHICH IT IS A PARTY IN THE COURTS OF ANY JURISDICTION.**

(c) *Waiver of Venue.* **THE BORROWER AND EACH OTHER LOAN PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS TO WHICH IT IS A PARTY IN ANY NEW YORK STATE OR FEDERAL COURT REFERRED TO IN SECTION 10.15(b). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST**

EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *Service of Process.* **EACH LOAN PARTY IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY AGENT OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.**

Section 10.16. *Waiver of Jury Trial.* **EACH OF THE BORROWER, THE AGENTS AND THE LENDERS IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, THE LOANS, THE LETTERS OF CREDIT OR THE ACTIONS OF ANY AGENT OR ANY LENDER PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.**

Section 10.17. *Entire Agreement.* This agreement and the other Loan Documents represent the final agreement among the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

Section 10.18. *Amendment and Restatement.* It is the intention of each of the parties hereto that the Existing Credit Agreement be amended and restated so as to preserve the perfection and priority of all security interests securing indebtedness and obligations under the Existing Credit Agreement and that all Indebtedness and Obligations of the Loan Parties under the Loan Documents shall be secured by the Collateral Documents and that this Agreement does not constitute a novation of the obligations and liabilities existing under the Existing Credit Agreement. The parties hereto further acknowledge and agree that this Agreement constitutes an amendment and restatement of the Existing Credit Agreement made under and in accordance with the terms of Section 10.01 of the Existing Credit Agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

~~THE STAR TRIBUNE COMPANY~~ [NEW
OPCO LLC], as Borrower

By: _____
Name:
Title:

CREDIT SUISSE, CAYMAN ISLANDS
BRANCH, as Administrative Agent
and Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

Lenders
CREDIT SUISSE, CAYMAN ISLANDS
BRANCH, as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

[INSERT NAME OF LENDER]

By: _____

Name:

Title:

If second signature is required:

By: _____

Name:

Title: