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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934, as amended**

**Date of Report (Date of earliest event reported) June 28, 2011**

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**DUCOMMUN INCORPORATED**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-08174**  
(Commission  
File Number)

**95-0693330**  
(IRS Employer  
Identification No.)

**23301 Wilmington Avenue, Carson,  
California**  
(Address of principal executive offices)

**90745-6209**  
(Zip Code)

**Registrant's telephone number, including area code (310) 513-7200**

**N/A**  
(Former name or former address, if changed since last report.)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Item 1.01 Entry into a Material Definitive Agreement.

### Background

On June 28, 2011 (the “**Closing Date**”), Ducommun Incorporated, a Delaware corporation (“**Ducommun**”) closed its previously announced acquisition of LaBarge, Inc., a Delaware corporation (“**LaBarge**”) pursuant to the Agreement and Plan of Merger, dated April 3, 2011 (the “**Merger Agreement**”) among Ducommun, DLBMS, Inc., a Delaware corporation and a wholly-owned subsidiary of Ducommun (“**Merger Sub**”), and LaBarge. Under the terms of the Merger Agreement, on the Closing Date, Merger Sub merged with and into LaBarge with LaBarge continuing as the surviving corporation and a wholly-owned subsidiary of Ducommun (the “**Merger**”). For more information, see Item 2.01 below.

Concurrently with the closing of the Merger, Ducommun consummated its previously announced offering (the “**Notes Offering**”) of \$200.0 million aggregate principal amount of 9.75% senior unsecured notes due 2018 (the “**Notes**”), and Ducommun and certain of its subsidiaries entered into a Credit Agreement with UBS Securities LLC and Credit Suisse Securities (USA) LLC as joint lead arrangers, UBS AG, Stamford Branch as issuing bank, administrative agent and collateral agent, and the other lenders party thereto (the “**New Credit Agreement**”). The proceeds of the Notes Offering and borrowings under the New Credit Agreement were used to finance the cost of the Merger, repay Ducommun’s existing indebtedness under the Second Amended and Restated Credit Agreement, dated as of June 26, 2009 among Ducommun, Bank of America, N.A., as administrative agent and the other lenders party thereto, as amended (the “**Terminated Credit Agreement**”), repay the existing indebtedness of LaBarge and its affiliates under the Loan Agreement dated as of December 22, 2008, by and among LaBarge, its affiliates, U.S. Bank National Association and the other lenders party thereto (together with the Terminated Credit Agreement, the “**Existing Credit Facilities**”), pay fees and expenses in connection with the Merger, Notes Offering and New Credit Agreement (collectively, the “**Transactions**”) and add new cash to the Ducommun balance sheet. For more information regarding the Notes and New Credit Agreement, see below.

### New Credit Agreement

Concurrently with the closing of the Notes Offering and the Merger, Ducommun and certain of its subsidiaries entered into the New Credit Agreement, which provides for a: (i) \$190.0 million senior secured term loan facility (“**New Term Loan Facility**”) that was fully borrowed on the Closing Date and (ii) up to \$60.0 million senior secured revolving credit facility (“**New Revolving Credit Facility**”). The New Term Loan Facility matures in June 2017, and the New Revolving Credit Facility matures in June 2016. Ducommun has the option to request the addition of one or more incremental term loan facilities or the increase of commitments under the New Revolving Credit Facility by an aggregate amount of up to \$75.0 million, which additions and increase are subject to the satisfaction of certain conditions set forth in the New Credit Agreement.

The New Term Loan Facility and the New Revolving Credit Facility bear interest at the London Interbank Offered Rate (“**LIBOR**”) plus 4.25% per annum or the base rate plus 3.25% per annum, at Ducommun’s option. The LIBOR rate is subject to a floor of 1.25% per annum. Ducommun pays a commitment fee on the unused portion of the New Revolving Credit Facility of 0.75% per annum.

Each of Ducommun's current and future material domestic subsidiaries (the "**Credit Agreement Guarantors**") is required to guarantee Ducommun's obligations under the New Credit Agreement. Ducommun's and the Credit Agreement Guarantors' obligations under the New Credit Agreement are secured by substantially all of their assets.

Ducommun is required to make mandatory prepayments of amounts outstanding under the New Credit Agreement with: (i) 100% of the net proceeds received from certain sales or other dispositions of all or any part of Ducommun's and its subsidiaries' assets subject to certain reinvestment rights and repatriation issues, (ii) 100% of the net proceeds received by Ducommun or any of its subsidiaries from the issuance of certain debt or preferred stock, (iii) 100% of all casualty and condemnation proceeds received by Ducommun or any of its subsidiaries subject to certain reinvestment rights, and (iv) 50% of Ducommun's consolidated excess cash flow subject to stepdowns to 25% and 0% based upon a defined total leverage ratio, in each case subject to specified thresholds and qualifications.

If before June 28, 2012, the New Term Loan Facility is: (i) refinanced with a lower applicable margin or yield than that applicable to the New Term Loan Facility or (ii) a lender's portion of the New Term Loan Facility is mandatorily assigned and such lender does not consent to certain repricing events under the New Term Loan Facility, then such refinancings or assignments shall be made at 101% of the principal amount so refinanced or assigned.

The New Credit Agreement contains affirmative and negative covenants reasonably customary for similar credit facilities. If, during a given fiscal quarter, (i) the sum of (a) any amounts outstanding under the New Revolving Credit Facility plus (b) the amount drawn under any letters of credit exceeds \$1.0 million; or (ii) the aggregate amount of outstanding letters of credit exceeds \$5.0 million, the New Revolving Credit Facility will be subject to a maximum total leverage ratio. In addition, Ducommun's consolidated EBITDA as of the end of any fiscal quarter on a trailing four-quarters basis is not permitted to be less than \$50.0 million, and Ducommun's ability to make capital expenditures is limited.

The New Credit Agreement contains customary events of default, including, without limitation, payment defaults, breaches of certain representations and warranties, covenant defaults, cross defaults to certain material indebtedness, certain events of bankruptcy and insolvency, certain events under ERISA, material judgments and a change of control. A breach of the maximum total leverage ratio constitutes an event of default only under the New Revolving Credit Facility, and not an event of default under the New Term Loan Facility, until the earlier of: (i) 45 days after the date such event of default occurred and is continuing with respect to the New Revolving Credit Facility and (ii) the date on which the administrative agent or the lenders under the New Revolving Credit Facility have accelerated such facility or have commenced the exercise of remedies with respect to such facility. Upon an event of default, the administrative agent and the lenders under the New Credit Agreement are entitled to take various actions, including, without limitation, the acceleration of amounts due thereunder and termination of commitments under the New Revolving Credit Facility.

## 9.75% Senior Notes due 2018

Concurrently with the closing of the Merger and entering into the New Credit Agreement, on the Closing Date, Ducommun issued \$200 million aggregate principal amount of the Notes in a private placement conducted pursuant to Rule 144A and Regulation S under the Securities Act of 1933, as amended (the “**Securities Act**”) at an issue price of 100% of the par value. Each of Ducommun’s existing and future material domestic restricted subsidiaries (the “**Notes Guarantors**”) guarantees the Notes on a senior unsecured basis. The Notes were issued pursuant to an indenture dated as of the Closing Date (the “**Indenture**”), between Ducommun, the Notes Guarantors and the Wilmington Trust FSB, as trustee (the “**Trustee**”).

The Notes mature on July 15, 2018 and bear interest at a rate of 9.75% per annum. Interest on the Notes is payable semi-annually in cash on July 15 and January 15 of each year, beginning on January 15, 2012.

The Notes may be redeemed, in whole or in part, under the following circumstances:

- Prior to July 15, 2015, Ducommun may redeem some or all of the Notes at a redemption price equal to 100% of the principal amount of the Notes redeemed, plus accrued and unpaid interest to the redemption date plus a “make-whole” premium.
- Ducommun may redeem up to 35% of the aggregate principal amount of the Notes using net proceeds from certain equity offerings completed on or prior to July 15, 2014 at a redemption price equal to 109.75% of the principal amount of the Notes being redeemed plus accrued and unpaid interest to the redemption date.
- On or after July 15, 2015, Ducommun may redeem some or all of the Notes at a redemption price equal to 104.875% in 2015, 102.438% in 2016 and 100.000% in 2017 and thereafter of the Notes being redeemed plus accrued and unpaid interest to the redemption date.

Upon the occurrence of a change of control (as defined in the Indenture), Ducommun is required to offer to purchase the Notes at a purchase price equal to 101% of the principal amount of the Notes on the date of purchase plus accrued and unpaid interest on the Notes purchased to the date of purchase.

The Notes and guarantees for such Notes are Ducommun’s and the Notes Guarantors’ senior unsecured obligations and are: (i) pari passu in right of payment with all of Ducommun’s and the Notes Guarantors’ existing and future senior unsecured indebtedness, (ii) senior in right of payment to any of Ducommun’s and the Notes Guarantors’ future subordinated obligations, (iii) subordinated to all Ducommun’s and the Notes Guarantors’ existing and future secured debt to the extent of the value of assets securing that indebtedness and (iv) structurally subordinated to all indebtedness and other liabilities, including trade payables, of any of Ducommun’s existing and future subsidiaries that are not Notes Guarantors.

The Indenture contains customary covenants applicable to Ducommun and the Notes Guarantors and customary events of default. Upon the occurrence and continuing of an event of default under the Indenture, the Trustee or holders of at least 25% in aggregate principal amount of the outstanding Notes may declare the principal and accrued but unpaid interest to be due and payable immediately.

The Notes have not been registered under the Securities Act or any state securities laws and may not be offered or sold in the United States absent such registration or an exemption from the registration requirements of the Securities Act and any applicable state securities laws.

Neither this Current Report on Form 8-K, nor the press release attached hereto as Exhibit 99.1, constitutes an offer to sell or solicitation of an offer to purchase with respect to the Notes or other securities, nor shall there be any sale of the Notes in any state or jurisdiction in which such offer, solicitation or purchase would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

### **Registration Rights Agreement**

Pursuant to a Registration Rights Agreement, dated June 28, 2011 between Ducommun, certain of its subsidiaries, UBS Securities LLC and Credit Suisse Securities (USA) LLC (the “**Registration Rights Agreement**”) executed in conjunction with the Notes Offering, Ducommun agreed to file an exchange offer registration statement to exchange the Notes for a new issue of substantially identical debt securities registered under the Securities Act as evidence of the same underlying obligation of indebtedness. Ducommun also agreed to file a shelf registration statement to cover resales of the Notes under certain circumstances. If Ducommun fails to satisfy certain obligations under the Registration Rights Agreement within specified time periods, Ducommun is required to pay additional interest to the holders of the Notes.

### **Certain Relationships**

Credit Suisse Securities (USA) LLC (“**Credit Suisse**”), UBS Securities LLC (“**UBS**” and together with Credit Suisse, “**UBS/CS**”) or their respective affiliates have from time to time provided investment banking, commercial banking and financial advisory services to Ducommun and its affiliates, including in connection with the Transactions, for which they have received, or will receive, customary compensation. In addition, from time to time, UBS/CS and their affiliates may effect transactions for their own account or the account of their customers, and hold on behalf of themselves or their customers, long or short positions in Ducommun’s debt securities or loans, and may do so in the future. Certain affiliates of UBS/CS currently act as lenders and/or agents under the Existing Credit Facilities and may receive a portion of the net proceeds of the Notes Offering and the New Credit Agreement. In addition, UBS/CS or certain of their respective affiliates are lenders and/or agents under the New Credit Agreement.

The foregoing descriptions of the Indenture, Registration Rights Agreement and New Credit Agreement are qualified in their entirety by reference to such agreements, copies of which are attached hereto as Exhibits 4.1, 4.2 and 10.1, respectively, and incorporated herein by reference.

### **Item 1.02 Termination of a Material Definitive Agreement.**

On the Closing Date, Ducommun terminated its Terminated Credit Agreement. Before Ducommun could issue the Notes and enter into the New Credit Agreement discussed in Item 1.01 above, Ducommun was required to terminate the Terminated Credit Agreement. In connection with such termination, Ducommun repaid all outstanding loans and interest accrued under the Terminated Credit Agreement through the date of termination.

For more information regarding the Terminated Credit Agreement, see note 7 of the audited consolidated financial statements for Ducommun and its subsidiaries for the fiscal year ended December 31, 2010 included in the Form 10-K filed with the Securities and Exchange Commission (“SEC”) on February 22, 2011, which is incorporated in this Item 1.02 by reference.

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

On the Closing Date, Ducommun closed its previously announced acquisition of LaBarge pursuant to the Merger Agreement. Under the terms of the Merger Agreement, Merger Sub merged with and into LaBarge on the Closing Date with LaBarge continuing as the surviving corporation and a wholly-owned subsidiary of Ducommun. LaBarge provides electronics manufacturing services, which involves the manufacture of custom, complex, high-reliability and mission-critical products for customers in diverse technology-driven markets, such as the aerospace and defense, industrial, natural resources, medical and other commercial markets.

Pursuant to the Merger Agreement, each outstanding: (i) share of common stock, par value \$.01 per share of LaBarge (“**LaBarge Common Stock**”) (including each outstanding share of restricted stock and the associated preferred stock purchase rights granted pursuant to the Rights Agreement, dated November 8, 2001 between LaBarge and Registrar and Transfer Company, as amended), other than shares: (a) held by LaBarge or its subsidiaries, (b) owned by Ducommun or its subsidiaries and (c) owned by stockholders who have not consented to the Merger and who have properly demanded appraisal for their shares under Delaware law, received \$19.25 in cash, without interest and (ii) option convertible into shares of LaBarge Common Stock received in cash, without interest and less applicable withholding taxes, an amount equal to the product of: (a) the excess, if any, of \$19.25 over the exercise price per share of LaBarge Common Stock for such option multiplied by (b) the total number of shares of LaBarge Common Stock then subject to such option immediately prior to the closing of the Merger. As described in Item 1.01 above, Ducommun financed the Merger with a portion of the proceeds of the Notes Offering and New Credit Agreement.

The foregoing description of the Merger Agreement is qualified in its entirety by reference to the Merger Agreement, a copy of which was filed as Exhibit 2.1 to Ducommun’s Current Report on Form 8-K filed with the SEC on April 5, 2011 and is incorporated herein by reference.

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

The information contained in Item 1.01 above regarding the Notes Offering and New Credit Agreement is hereby incorporated by reference into this Item 2.03.

**Item 8.01 Other Events.**

On the Closing Date, Ducommun issued a press release announcing that it had: (i) closed the Merger and the Notes Offering and (ii) entered into the New Credit Agreement. A copy of the press release is attached hereto as Exhibit 99.1, and is incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

**(a) Financial Statements of Business Acquired**

Ducommun will furnish any financial statements required by Item 9.01(a) by amendment not later than 71 calendar days after the date that this initial Current Report on Form 8-K with respect to the consummation of the Merger reported under Item 2.01 is required to have been filed with the SEC pursuant to SEC rules.

**(b) Pro Forma Financial Information**

Ducommun will furnish any financial statements required by Item 9.01(b) by amendment not later than 71 calendar days after the date that this initial Current Report on Form 8-K with respect to the consummation of the Merger reported under Item 2.01 is required to have been filed with the SEC pursuant to SEC rules.

**(d) Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
2.1	Agreement and Plan of Merger, dated as of April 3, 2011, among Ducommun Incorporated, DLBMS, Inc. and LaBarge, Inc. (incorporated by reference to Exhibit 2.1 of Ducommun's Current Report on Form 8-K filed with the SEC on April 5, 2011).
4.1	Indenture, dated June 28, 2011, between Ducommun Incorporated, certain of its subsidiaries and Wilmington Trust FSB, as trustee.
4.2	Registration Rights Agreement, dated June 28, 2011 between Ducommun Incorporated, certain of its subsidiaries, UBS Securities LLC and Credit Suisse Securities (USA) LLC.
10.1	Credit Agreement, dated as of June 28, 2011, among Ducommun Incorporated, certain of its subsidiaries, UBS Securities LLC and Credit Suisse Securities (USA) LLC as joint lead arrangers, UBS AG, Stamford Branch as issuing bank, administrative agent and collateral agent, and the other lenders party thereto.
99.1	Press Release dated June 28, 2011.

**SIGNATURES**

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

**DUCOMMUN INCORPORATED**

(Registrant)

Date: June 28, 2011

By: /s/ James S. Heiser

James S. Heiser

Vice President and General Counsel



## Exhibit Index

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99.1	Press Release dated June 28, 2011.

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DUCOMMUN INCORPORATED

Issuer

9.750% Senior Notes due 2018

SUBSIDIARY GUARANTORS

named herein

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INDENTURE

Dated as of June 28, 2011

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WILMINGTON TRUST FSB

Trustee

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CROSS-REFERENCE TABLE

<u>TIA Section</u>	<u>Indenture Section</u>
310(a)	7.10
(b)	7.10
(b)(1)	7.10
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	N.A.
(b)	11.03
(c)	11.03
313(a)	7.06
(b)	7.06
314(a)	4.02; 4.13

N.A. means Not Applicable.

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of this Indenture.

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INDENTURE dated as of June 28, 2011, among DUCOMMUN INCORPORATED, a Delaware corporation (the “Company”), the SUBSIDIARY GUARANTORS from time to time party hereto and WILMINGTON TRUST FSB, as trustee (the “Trustee”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Company’s Initial Securities, Exchange Securities and Private Exchange Securities (collectively, the “Securities”):

ARTICLE 1  
DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01 Definitions.

“Accounts Receivable Program” means (i) the accounts receivable discount sales program solely with respect to the accounts receivable of “the Buyer” (as identified therein as of the date of this Indenture) established pursuant to the Supplier Agreement between LaBarge and Citibank, N.A. dated as of June 9, 2005, as amended on February 1, 2010, and as further amended, supplemented or otherwise modified from time to time; provided that any amendment, supplement or modification adverse in any material respect to the Company or any Restricted Subsidiary shall be permitted under the terms of the Credit Facilities, (ii) the accounts receivable discount sales program solely with respect to the accounts receivable of “the Buyer” (as identified therein as of the date of this Indenture) established pursuant to the Supplier Agreement between Ducommun Aerostructures New York, Inc. and Citibank, N.A. dated as of November 20, 2009, as further amended, supplemented or otherwise modified from time to time; provided that any amendment, supplement or modification adverse in any material respect to the Company or any Restricted Subsidiary shall be permitted under the terms of the Credit Facilities, (iii) the accounts receivable discount sales program solely with respect to the accounts receivable of “the Buyer” (as identified therein as of the date of this Indenture) established pursuant to the Supplier Agreement between CMP Display Systems, Inc. and Citibank, N.A. dated as of December 21, 2010, as amended, supplemented or otherwise modified from time to time; provided that any amendment, supplement or modification adverse in any material respect to the Company or any Restricted Subsidiary shall be permitted under the terms of the Credit Facilities, (iv) the accounts receivable discount sales program solely with respect to the accounts receivable of “the Buyer” (as identified therein as of the date hereof) established pursuant to the Supplier Agreement between Ducommun AeroStructures, Inc. and Citibank, N.A. dated as of March 11, 2005, as amended on August 31, 2010, and as further amended, supplemented or otherwise modified from time to time to the extent permitted; provided that any amendment, supplement or modification adverse in any material respect to the Company or any Restricted Subsidiary shall be permitted under the terms of the Credit Facilities, and (v) any accounts receivable discount sales program permitted under the terms of the Credit Facilities or with terms and pursuant to an agreement in substance substantially similar to those set forth in clauses (i) through (iv) and established in the good faith business judgment of the Company, in each case as such agreements may be amended, supplemented or otherwise modified from time to time; provided that any amendment, supplement or modification adverse in any material respect to the Company or any Restricted Subsidiary shall be permitted under the terms of the Credit Facilities.

“Additional Assets” means:

(1) any property, plant, equipment or other long-term tangible or intangible asset used or usable in a Related Business;

(2) the Capital Stock of a Person that becomes a Domestic Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or a Subsidiary Guarantor; or

(3) Capital Stock constituting a minority interest in any Person that at such time is a Domestic Restricted Subsidiary;

provided, however, that any such Restricted Subsidiary described in clause (2) or (3) above is primarily engaged in a Related Business.

“Additional Securities” means Securities issued under this Indenture after the Issue Date and in compliance with Sections 2.13 and 4.03, it being understood that any Securities issued in exchange for or replacement of any Initial Security issued on the Issue Date shall not be an Additional Security, including any such Securities issued pursuant to a Registration Rights Agreement.

“Affiliate” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. For purposes of Sections 4.04, 4.06 and 4.07 only, “Affiliate” shall also mean any beneficial owner of Capital Stock representing 10% or more of the total voting power of the Voting Stock (on a fully diluted basis) of the Company or of rights or warrants to purchase such Capital Stock (whether or not currently exercisable) and any Person who would be an Affiliate of any such beneficial owner pursuant to the first sentence hereof.

“Applicable Premium” means, with respect to a Security at any redemption date, as determined by the Company or an agent thereof, the greater of (i) 1.0% of the then outstanding principal amount of such Security at such time and (ii) the excess, if any, of (A) the present value at such redemption date of (1) the redemption price of such Security on July 15, 2015 (such redemption price being described in the table in the second paragraph of section 5 of the Securities, exclusive of any accrued interest), plus (2) all required remaining scheduled interest payments due on such Security through July 15, 2015 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points, over (B) the then outstanding principal amount of such Security on such redemption date.

“Asset Disposition” means any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions) by the Company or any Restricted Subsidiary, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a “disposition”), of:



(1) any shares of Capital Stock of a Restricted Subsidiary (other than directors' qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary);

(2) all or substantially all the assets of any division or line of business of the Company or any Restricted Subsidiary; or

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

other than, in the case of clauses (1), (2) and (3) above, (A) a disposition by a Restricted Subsidiary to the Company or a Restricted Subsidiary or by the Company or a Restricted Subsidiary to a Restricted Subsidiary, (B) for purposes of Section 4.06 only, (i) a disposition that constitutes a Restricted Payment (or would constitute a Restricted Payment but for the exclusions from the definition thereof) and that is not prohibited by Section 4.04 and (ii) a disposition of all or substantially all the assets of the Company in accordance with Section 5.01; (C) any disposition or series of related dispositions of assets to the extent the aggregate net book value thereof does not exceed \$5.0 million; (D) a disposition of cash or Temporary Cash Investments; (E) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien); (F) non-recourse sales of accounts receivable of the Company or any Restricted Subsidiary pursuant to and in accordance with the terms of an Accounts Receivable Program; (G) any exchange of like property pursuant to Section 1031 of the Code for use in a Related Business; (H) a disposition of assets that are worn-out, obsolete or damaged or no longer used or useful in the business of the Company or any Restricted Subsidiary, as the case may be, in the ordinary course of business; (I) the licensing or sublicensing of intellectual property or other general intangibles and licenses, sublicenses, leases or subleases of other property in the ordinary course of business which, in each case, does not materially interfere with the business of the Company and its Restricted Subsidiaries; (J) the disposition of any property or other assets of the Company or any of its Restricted Subsidiaries by reason of theft, loss, physical destruction or damage, taking or similar event; (K) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind; and (L) foreclosures on assets subject to Liens otherwise permitted to be Incurred by the Company or any of its Restricted Subsidiaries under this Indenture.

"Attributable Debt" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate borne by the Securities, compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended); provided, however, that if such Sale/Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation".

"Average Life" means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing (1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of or redemption or similar payment with respect to such Indebtedness multiplied by the amount of such payment by (2) the sum of all such payments.

“Board of Directors” means the Board of Directors of the Company or any committee thereof duly authorized to act on behalf of such Board.

“Business Day” means each day which is not a Legal Holiday.

“Capital Lease Obligation” means an obligation that is required to be classified and accounted for as a capital lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of Section 4.12, a Capital Lease Obligation will be deemed to be secured by a Lien on the property being leased.

“Capital Stock” of any Person means any and all shares, interests (including partnership interests), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into or exchangeable for such equity.

“Captive Insurance Entity” means any Person (other than an individual) created solely for the purpose of purchasing or providing, or facilitating the provision of, insurance for products liability, workers compensation, property damage, professional indemnity, employee benefits, employer’s liability and motor and medical expenses, in each case, to the extent that such insurance may be so purchased, provided, or facilitated in accordance with applicable requirements of law.

“Change of Control” means the occurrence of any of the following events:

(1) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (1) such person shall be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of the total voting power (measured by voting power rather than number of shares) of the Voting Stock of the Company (including, without limitation, pursuant to a merger or consolidation);

(2) individuals who on the Issue Date constituted the Board of Directors (together with any new directors whose election or appointment by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of a majority of the directors of the Company then still in office who were either directors on the Issue Date or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors then in office;

(3) the adoption of a plan relating to the liquidation or dissolution of the Company; or

(4) the merger or consolidation of the Company with or into another Person or the merger of another Person with or into the Company, or the sale of all or substantially all the assets of the Company (determined on a consolidated basis) to another Person other than a transaction following which (A) in the case of a merger or consolidation transaction, holders of securities that represented 100% of the Voting Stock of the Company immediately prior to such transaction (or other securities into which such securities are converted as part of such merger or consolidation transaction) own directly or indirectly at least a majority of the voting power of the Voting Stock of the surviving Person in such merger or consolidation transaction immediately after such transaction and (B) in the case of a sale of assets transaction, each transferee is or becomes an obligor in respect of the Securities and a Subsidiary of the transferor of such assets.

“Code” means the Internal Revenue Code of 1986, as amended.

“Company” means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor and, for purposes of any provision contained herein and required by the TIA, each other obligor on the Securities.

“Consolidated Coverage Ratio” as of any date of determination means the ratio of

(a) the aggregate amount of EBITDA for the period ending as of the most recent four consecutive fiscal quarters for which internal financial statements are available prior to the date of such determination to

(b) Consolidated Interest Expense for such four fiscal quarters;

provided, however, that:

(1) if the Company or any Restricted Subsidiary has Incurred any Indebtedness since the beginning of such period that remains outstanding or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, or both, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness (including the application of the net proceeds therefrom) as if such Indebtedness had been Incurred on the first day of such period;

(2) if the Company or any Restricted Subsidiary has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of such period or if any Indebtedness is to be repaid, repurchased, defeased or otherwise discharged (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) on the date of the transaction giving rise to the need to calculate the Consolidated Coverage Ratio, EBITDA and Consolidated Interest Expense for such period shall be calculated on a pro forma basis as if such discharge had occurred on the first day of such period and as if the Company or such Restricted Subsidiary has not earned the interest income actually earned during such period in respect of cash or Temporary Cash Investments used to repay, repurchase, defease or otherwise discharge such Indebtedness;

(3) if since the beginning of such period the Company or any Restricted Subsidiary shall have made any Asset Disposition, EBITDA for such period shall be reduced by an amount equal to EBITDA (if positive) directly attributable to the assets which are the subject of such Asset Disposition for such period, or increased by an amount equal to EBITDA (if negative), directly attributable thereto for such period and Consolidated Interest Expense for such period

shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Company or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged with respect to the Company and its continuing Restricted Subsidiaries in connection with such Asset Disposition for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Company and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale);

(4) if since the beginning of such period the Company or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) or an acquisition of all of the Capital Stock of a Person or assets, including any acquisition of assets occurring in connection with a transaction requiring a calculation to be made hereunder, which constitutes all or substantially all of an operating unit or product line of a business or all or substantially all of the assets of the acquired Person, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period;

(5) if since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period) shall have made any Asset Disposition, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (3) or (4) above if made by the Company or a Restricted Subsidiary during such period, EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto as if such Asset Disposition, Investment or acquisition occurred on the first day of such period;

(6) if since the beginning of such period any Person was designated as an Unrestricted Subsidiary or redesignated as, or otherwise became, a Restricted Subsidiary, EBITDA and Consolidated Interest Expense shall be calculated on a pro forma basis as if such event had occurred on the first day of such period; and

(7) if, since the beginning of such period, the Company has classified any of its businesses as discontinued operations, EBITDA and Consolidated Interest Expense shall be calculated on a pro forma basis as to exclude the impact of such discontinued operations on or after the date such operations are classified as discontinued.

For purposes of this definition, whenever pro forma effect is to be given to an acquisition of assets, the amount of income or earnings relating thereto and the amount of Consolidated Interest Expense associated with any Indebtedness Incurred in connection therewith, the pro forma calculations shall be determined in good faith by a responsible financial or accounting Officer of the Company (and shall include any applicable Pro Forma Cost Savings). If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness if such Interest Rate Agreement has a remaining term in excess of 12 months). If any Indebtedness is Incurred under a revolving credit facility and is being given pro forma effect, the interest on such Indebtedness shall be calculated based on the average daily balance of such Indebtedness for the four fiscal quarters subject to the pro forma calculation to the extent that such Indebtedness was Incurred solely for working capital purposes.

“Consolidated Interest Expense” means, for any period, the total interest expense of the Company and its consolidated Restricted Subsidiaries, plus, to the extent not included in such total interest expense, and to the extent Incurred by the Company or its Restricted Subsidiaries, without duplication:

(1) interest expense attributable to Capital Lease Obligations;

(2) amortization of debt discount and debt issuance cost;

(3) capitalized interest;

(4) non-cash interest expense (but excluding any non-cash interest expense attributable to the movement in mark-to-market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP);

(5) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing;

(6) net payments pursuant to Hedging Obligations in respect of Indebtedness;

(7) dividends accrued in respect of all Preferred Stock held by Persons other than the Company or a Wholly Owned Subsidiary (other than dividends payable solely in Capital Stock (other than Disqualified Stock)); provided, however, that such dividends will be multiplied by a fraction, the numerator of which is one and the denominator of which is one minus the effective combined tax rate of the issuer of such Preferred Stock (expressed as a decimal) for such period (as estimated by the chief financial officer of the Company in good faith);

(8) interest Incurred in connection with Investments in discontinued operations;

(9) interest accruing on any Indebtedness of any other Person to the extent such Indebtedness is Guaranteed by (or secured by the assets of) the Company or any Restricted Subsidiary; and

(10) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than the Company) in connection with Indebtedness Incurred by such plan or trust;

provided, however, that Consolidated Interest Expense will not include (i) amortization of debt financing fees, debt issuance costs, commissions, fees and expenses and (ii) any expensing of bridge, commitment and other financing fees.

“Consolidated Net Income” means, for any period, the net income of the Company and its consolidated Subsidiaries determined in accordance with GAAP; provided, however, that there shall not be included in such Consolidated Net Income:

(1) any net income of any Person (other than the Company) if such Person is not a Restricted Subsidiary, except that:

(A) subject to the exclusion contained in clause (4) below, the Company's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Restricted Subsidiary, to the limitations contained in clause (3) below); and

(B) the Company's equity in a net loss of any such Person for such period shall be included in determining such Consolidated Net Income;

(2) any net income (or loss) of any Person acquired by the Company or a Subsidiary in a pooling of interests transaction for any period prior to the date of such acquisition;

(3) any net income of any Restricted Subsidiary (other than a Subsidiary Guarantor) if such Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Company, except that:

(A) subject to the exclusion contained in clause (4) below, the Company's equity in the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Restricted Subsidiary during such period to the Company or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Restricted Subsidiary, to the limitation contained in this clause); and

(B) the Company's equity in a net loss of any such Restricted Subsidiary for such period shall be included in determining such Consolidated Net Income;

(4) any net after tax gain (or loss) realized upon the sale or other disposition of any assets of the Company, its consolidated Subsidiaries or any other Person (including pursuant to any Sale/Leaseback Transaction) which are not sold or otherwise disposed of in the ordinary course of business and any gain (or loss) realized upon the sale or other disposition of any Capital Stock of any Person;

(5) any net after tax effect of extraordinary gains or losses;

(6) the cumulative effect of a change in accounting principles; and

(7) any net after-tax income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued),

in each case, for such period. Notwithstanding the foregoing, for the purpose of Section 4.04 only, there shall be excluded from Consolidated Net Income any repurchases, repayments or redemptions of Investments, proceeds realized on the sale of Investments or return of capital to the Company or a Restricted Subsidiary to the extent such repurchases, repayments, redemptions, proceeds or returns increase the amount of Restricted Payments permitted pursuant to Section 4.04(a)(3)(D).

“Consolidated Net Tangible Assets” means, with respect to any Person at any date of determination, the aggregate amount of total assets included in such Person’s most recent quarterly or annual consolidated balance sheet prepared in accordance with GAAP less applicable reserves reflected in such balance sheet, after deducting the following amounts: (a) all current liabilities reflected in such balance sheet, and (b) all goodwill, trademarks, patents, unamortized debt discounts and expenses and other like intangibles reflected in such balance sheet.

“Credit Agreement” means that certain Credit Agreement, to be dated as of the Issue Date, by and among the Company, as borrower, the guarantors party thereto, the lenders party thereto, UBS Securities LLC and Credit Suisse Securities (USA) LLC, as joint lead arrangers and joint bookmanagers, UBS AG, Stamford Branch, as issuing bank, administrative agent and collateral agent, and the other parties thereto, including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith (including Hedging Obligations with lenders party to the Credit Agreement or their affiliates), and, in each case, as amended, restated, modified, renewed, refunded, replaced in any manner (whether upon or after termination or otherwise and including the inclusion of additional borrowers or guarantors thereunder) or Refinanced (including by means of sales of debt securities to institutional investors or other purchasers) in whole or in part from time to time pursuant to credit facilities, indentures, debt purchase agreements or similar documents, whether or not with the same agent, trustee, representative, lenders, investors or debt holders and irrespective of any changes in the terms and conditions thereof (including any increase of borrowings permitted under Section 4.03).

“Credit Facilities” means, one or more debt facilities (including, without limitation, the Credit Agreement), commercial paper facilities or indentures with banks or other institutional lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables), letters of credit or other Indebtedness, including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith (including Hedging Obligations with lenders party to the Credit Agreement or their affiliates), in each case, as amended, restated, modified, renewed, refunded, replaced in any manner (whether upon or after termination or otherwise and including the inclusion of additional borrowers or guarantors thereunder) or Refinanced (including by means of sales of debt securities to institutional investors or other purchasers) in whole or in part from time to time pursuant to credit facilities, indentures, debt purchase agreements or similar documents, whether or not with the same agent, trustee, representative, lenders, investors or debt holders and irrespective of any changes in the terms and conditions thereof (including any increase of borrowings permitted under Section 4.03).

“Currency Agreement” means any foreign exchange contract, currency swap agreement or other similar agreement with respect to currency values.

“Default” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“Disqualified Stock” means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event:

- (1) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;
- (2) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or
- (3) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part;

in each case on or prior to the 91st day after the earlier of the Stated Maturity of the Securities or the day Securities are no longer outstanding; provided, however, that any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Capital Stock upon the occurrence of an “asset sale” or “change of control” occurring prior to the 91st day after the earlier of the Stated Maturity of the Securities or the day the Securities are no longer outstanding shall not constitute Disqualified Stock if:

(A) the “asset sale” or “change of control” provisions applicable to such Capital Stock are not more favorable to the holders of such Capital Stock than the terms applicable to the Securities in Sections 4.06 and 4.10 of this Indenture; and

(B) any such requirement only becomes operative after compliance with such terms applicable to the Securities, including the purchase of any Securities tendered pursuant thereto.

The amount of any Disqualified Stock that does not have a fixed redemption, repayment or repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Stock is to be determined pursuant to this Indenture; provided, however, that if such Disqualified Stock could not be required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price will be the book value of such Disqualified Stock as reflected in the most recent financial statements of such Person.

“Domestic Restricted Subsidiary” means a Restricted Subsidiary that is incorporated or otherwise organized under the laws of the United States, any State thereof or the District of Columbia.



“EBITDA” for any period means the sum of Consolidated Net Income, plus the following to the extent deducted in calculating such Consolidated Net Income:

(1) all income taxes, franchise taxes or similar taxes or taxes based on profits or capital (including any penalties and interest related to such taxes or arising from any tax examinations) of the Company and its consolidated Restricted Subsidiaries;

(2) Consolidated Interest Expense;

(3) depreciation and amortization expense of the Company and its consolidated Restricted Subsidiaries (excluding amortization expense attributable to a prepaid operating activity item that was paid in cash in a prior period);

(4) all other non-cash charges of the Company and its consolidated Restricted Subsidiaries (including any impairment charge or asset write-off, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, and excluding any such non-cash charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period);

(5) cash restructuring charges, including integration costs and fees, expenses related to facilities closings and any reconstructions, recommissioning or reconfiguration of fixed assets for alternate uses, any severance or relocation expenses, curtailments or modifications to pension and post-retirement employee benefit plans, duplicative facilities closing charges and expenses and payments directly attributable to employee reduction or employee relocation;

(6) any net loss from discontinued operations and any net loss on disposal of discontinued operations;

(7) any extraordinary or non-recurring gains or losses; provided that the amount of any non-recurring loss, expense or charge during any period shall not exceed \$5.0 million;

(8) any effect of income (loss) from the early extinguishment, conversion or cancellation of debt, Hedging Obligations or other derivative instruments (including any write-off of any non-amortized debt issuance costs);

(9) the effect of marking to market Hedging Obligations permitted to be Incurred under Section 4.03(b)(7);

(10) (i) costs and expenses directly Incurred in connection with the Transactions, and (ii) costs and expenses in respect of any employment agreement (including severance costs), change in control (including with respect to the long term incentive program of LaBarge), stock based compensation or employee incentive agreement in respect of the Transactions; provided, that aggregate costs and expenses pursuant to clause (10)(ii) shall not exceed \$10.0 million;

(11) as a result of any acquisition of a Person in a Related Business: (i) any costs arising from purchase accounting adjustments, (ii) fees, expenses, financing costs, severance costs and management bonuses Incurred or paid (including attorneys' fees) and (iii) costs and expenses in respect of any employment agreement, change in control, stock based compensation or employee incentive agreement or plan or other employee benefit agreement or plan arising in connection with such acquisition or the occurrence of a change in control as defined under such compensation agreement or plan; provided that amounts under this clause (11) shall not exceed \$5.0 million in any period; and

(12) reasonable and customary fees, expenses, premiums and other charges in connection with the issuance or repayment of Indebtedness, Equity Offerings, any Refinancing transaction, amendment or other modification of any debt instrument, the making of any Permitted Investment, any Asset Sale or disposition not constituting an Asset Sale, in each case to the extent permitted by the terms of this Indenture (in each case whether or not consummated and in each case including reasonable and customary investment banking and attorneys' fees);

in each case for such period. Notwithstanding the foregoing, the provision for taxes based on the income or profits of, and the depreciation and amortization and non-cash charges of, a Restricted Subsidiary shall be added to Consolidated Net Income to compute EBITDA only to the extent (and in the same proportion, including by reason of minority interests) that the net income or loss of such Restricted Subsidiary was included in calculating Consolidated Net Income and only if a corresponding amount would be permitted at the date of determination to be dividended to the Company by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to such Restricted Subsidiary or its stockholders.

"Equity Offering" means an offering or private placement of common stock (or Preferred Stock that is convertible into such common stock), excluding Disqualified Stock, of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Foreign Restricted Subsidiary" means a Restricted Subsidiary that is not incorporated or otherwise organized under the laws of the United States, any State thereof or the District of Columbia.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the date of this Indenture.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(2) entered into for the purpose of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning. The term “Guarantor” shall mean any Person Guaranteeing any obligation.

“Guarantee Agreement” means a supplemental indenture, in substantially the form included as Exhibit 1 to this Indenture, pursuant to which a Subsidiary Guarantor guarantees the Company’s obligations with respect to the Securities on the terms provided for in this Indenture.

“Hedging Obligations” of any Person means the obligations of such Person pursuant to any Interest Rate Agreement or Currency Agreement.

“Holder” or “Securityholder” means the Person in whose name a Security is registered on the Registrar’s books.

“Immaterial Subsidiary” means, as of any date, any Restricted Subsidiary (i) whose total assets, as of that date, are less than \$1.0 million and whose total assets, as of that date and together with the total assets of all Immaterial Subsidiaries as of such date, are less than \$5.0 million and (ii) whose total revenues for the most recent 12-month period do not exceed \$1.0 million and whose total revenues for the most recent 12-month period, together with the total revenues for the most recent 12-month period for all Immaterial Subsidiaries, do not exceed \$5.0 million; provided, however, that a Restricted Subsidiary will not be considered to be an Immaterial Subsidiary if it, directly or indirectly, Guarantees or otherwise provides direct credit support for any Indebtedness of the Company or any Subsidiary Guarantor.

“Incur” means issue, assume, Guarantee, incur or otherwise become liable for; provided, however, that any Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Restricted Subsidiary. The term “Incurrence” when used as a noun shall have a correlative meaning.

Solely for purposes of determining compliance with Section 4.03:

(1) amortization of debt discount or the accretion of principal with respect to a non-interest bearing or other discount security or the accrual of interest or dividends;

(2) the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Capital Stock in the form of additional Capital Stock of the same class and with the same terms;

(3) the obligation to pay a premium in respect of Indebtedness arising in connection with the issuance of a notice of redemption or making of a mandatory offer to purchase such Indebtedness;

(4) changes in the principal amount of any Indebtedness that is denominated in a currency other than U.S. dollars solely as a result of fluctuations in exchange rates or currency values; and

(5) a change in GAAP that results in an obligation existing at the time of such change that is not previously classified as Indebtedness becoming Indebtedness;

in each case will not be deemed to be the Incurrence of Indebtedness.

“Indebtedness” means, with respect to any Person on any date of determination (without duplication):

(1) the principal in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(2) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale/Leaseback Transactions entered into by such Person;

(3) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);

(4) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers’ acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (1) through (3) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit);

(5) the fixed redemption, repayment or repurchase price of any Disqualified Stock of such Person or any Subsidiary of such Person as determined in accordance with this Indenture;

(6) all obligations of the type referred to in clauses (1) through (5) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;

(7) all obligations of the type referred to in clauses (1) through (6) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the value of such property or assets and the amount of the obligation so secured; and

(8) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

Notwithstanding the foregoing, in connection with the purchase by the Company or any Restricted Subsidiary of any business, the term “Indebtedness” will exclude post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; provided, however, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 90 days after becoming due.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date; provided, however, that in the case of Indebtedness sold at a discount, the amount of such Indebtedness at any time will be the accreted value thereof at such time.

“Indenture” means this Indenture as amended or supplemented from time to time.

“Independent Qualified Party” means an investment banking firm, accounting firm or appraisal firm of national standing; provided, however, that such firm is not an Affiliate of the Company.

“Initial Purchasers” means Credit Suisse Securities (USA) LLC and UBS Securities LLC.

“Interest Rate Agreement” means any interest rate swap agreement, interest rate cap agreement or other financial agreement or arrangement with respect to exposure to interest rates.

“Investment” in any Person means any direct or indirect advance, loan or other extension of credit (including by way of Guarantee or similar arrangement) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instrument issued by such Person. Except as otherwise provided for herein, the amount of an Investment shall be its fair value at the time the Investment is made and without giving effect to subsequent changes in value. The foregoing notwithstanding, “Investments” shall not include extensions of trade credit and advances to customers and suppliers made in the ordinary course of business.

For purposes of the definition of “Unrestricted Subsidiary”, the definition of “Restricted Payment” and Section 4.04, “Investment” shall include:

(1) the portion (proportionate to the Company’s equity interest in such Subsidiary) of the fair market value of the net assets of any Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary equal to an amount (if positive) equal to (A) the Company’s “Investment” in such Subsidiary at the time of such redesignation less (B) the portion (proportionate to the Company’s equity interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors.

“Issue Date” means the date on which the Securities (other than any Additional Securities) are originally issued.

“LaBarge” means LaBarge, Inc., a Delaware corporation.

“Legal Holiday” means a Saturday, a Sunday or a day on which banking institutions are not required to be open in the State of New York or the place of payment. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“Merger” means the merger of LaBarge into Merger Subsidiary, with LaBarge surviving the Merger and becoming a Wholly Owned Subsidiary of the Company.

“Merger Agreement” means that certain Agreement and Plan of Merger, dated as of April 3, 2011 (as amended, supplemented or otherwise modified from time to time in accordance with the provisions thereof, and including the disclosure schedules attached thereto) between Ducommun, LaBarge and Merger Subsidiary.

“Merger Subsidiary” means DLBMS, Inc., a Delaware corporation and a direct Wholly Owned Subsidiary of the Company.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Net Available Cash” from an Asset Disposition means cash payments received therefrom (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to such properties or assets or received in any other non-cash form), in each case net of:

(1) all legal, title and recording tax expenses, commissions and other fees and expenses (including, without limitation, brokerage, legal, accounting and investment banking fees and sales commissions) Incurred, and all Federal, state, provincial, foreign and local taxes paid or required to be accrued as a liability under GAAP, as a consequence of such Asset Disposition;

(2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law, be repaid out of the proceeds from such Asset Disposition;

(3) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of such Asset Disposition;

(4) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the property or other assets disposed in such Asset Disposition and retained by the Company or any Restricted Subsidiary after such Asset Disposition; and

(5) any portion of the purchase price from an Asset Disposition placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such Asset Disposition or otherwise in connection with that Asset Disposition; provided, however, that upon the termination of that escrow, Net Available Cash will be increased by any portion of funds in the escrow that are released to the Company or any Restricted Subsidiary.

“Net Cash Proceeds,” with respect to any issuance or sale of Capital Stock or Indebtedness, means the cash proceeds of such issuance or sale net of attorneys’ fees, accountants’ fees, underwriters’ or placement agents’ fees, discounts or commissions and brokerage, consultant and other fees and expenses actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

“Obligations” means, with respect to any Indebtedness, all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, and other amounts payable pursuant to the documentation governing such Indebtedness.

“Offering Circular” means the offering circular dated June 23, 2011, used in connection with the sale of the Initial Securities.

“Officer” means the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of the Company.

“Officers’ Certificate” means a certificate signed by two Officers and meeting the requirements of this Indenture.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company.

“Permitted Investment” means an Investment by the Company or any Restricted Subsidiary in:

- (1) the Company, a Restricted Subsidiary or a Person that will, upon the making of such Investment, become a Restricted Subsidiary; provided, however, that the primary business of such Restricted Subsidiary is a Related Business;
- (2) another Person, if as a result of such Investment, such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Company or a Restricted Subsidiary; provided, however, that such Person's primary business is a Related Business;
- (3) cash and Temporary Cash Investments;
- (4) receivables owing to the Company or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;
- (5) payroll, travel and similar advances made to officers and employees in the ordinary course of business;
- (6) loans or advances to employees in the ordinary course of business in accordance with the past practices of the Company or its Restricted Subsidiaries, but in any event not to exceed \$1.0 million in the aggregate outstanding at any one time;
- (7) stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Company or any Restricted Subsidiary or in satisfaction of judgments or settlements, compromises or resolutions of litigation, arbitration or other disputes;
- (8) any Person to the extent such Investment represents the non-cash portion of the consideration received for an Asset Disposition as permitted pursuant to Section 4.06 or any disposition of assets not constituting an Asset Disposition;
- (9) any Person where such Investment was acquired by the Company or any of its Restricted Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Company or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable or (b) as a result of a foreclosure by the Company or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
- (10) any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business by the Company or any Restricted Subsidiary;
- (11) any Person to the extent such Investments consist of Hedging Obligations otherwise permitted under Section 4.03;



(12) any Person to the extent such Investment exists on the Issue Date;

(13) any Person to the extent such Investments consist of Guarantees otherwise permitted under Section 4.03;

(14) any Person to the extent such Investments consist of earnest money deposits in connection with an acquisition permitted by this Indenture;

(15) any Person to the extent such Investments were held by any Person acquired or merged into the Company or any Restricted Subsidiary so long as such Investments were not acquired in contemplation of such acquisition or merger;

(16) advances to suppliers of amounts provided by customers for the purchase of materials and the preparation of goods and inventory in respect of customer contracts entered into in the ordinary course of business;

(17) Investments consisting of Capital Stock owned by the Company or a Subsidiary Guarantor in a Captive Insurance Entity and capital contributions in such Captive Insurance Entity consisting of insurance premiums in respect of insurance acquired in the ordinary course that is customary for companies of a similar size engaged in similar businesses in similar locations, in each case, as the Company; and

(18) any Person to the extent such Investments have an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (18) that are at the time outstanding (after giving effect to any such Investments that are returned to the Company or any Subsidiary that made such prior Investment, without restriction, in cash on or prior to the date of any such calculation, but only up to the amount of the Investment made under this clause (18) in such Person), not to exceed the greater of (i) \$15.0 million and (ii) 3.0% of Consolidated Net Tangible Assets.

“Permitted Liens” means:

(1) Liens on assets of the Company or any of its Restricted Subsidiaries securing Indebtedness and other Obligations pursuant to Credit Facilities that were permitted by the terms of this Indenture to be Incurred pursuant to Section 4.03 and/or securing Hedging Obligations related thereto with respect to obligations that do not exceed at any one time outstanding the greater of (i) \$250.0 million and (ii) an amount of Indebtedness such that on the date of such Incurrence and after giving effect thereto on a pro forma basis, the Secured Leverage Ratio would be no greater than 2.75 to 1.0;

(2) Liens in favor of the Company or the Subsidiary Guarantors;

(3) Liens on property of a Person existing at the time such Person becomes a Restricted Subsidiary of the Company or is merged with or into or consolidated with the Company or any Restricted Subsidiary of the Company; provided that such Liens were in existence prior to the contemplation of such Person becoming a Restricted Subsidiary of the Company or such merger or consolidation and do not extend to any assets other than those of the Person that becomes a Restricted Subsidiary of the Company or is merged with or into or consolidated with the Company or any Restricted Subsidiary of the Company;

(4) Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Company or any Subsidiary of the Company; provided that such Liens were in existence prior to such acquisition and not Incurred in contemplation of, such acquisition;

(5) Liens to secure the performance of statutory obligations, insurance, surety or appeal bonds, indemnity agreements, workers compensation, social security or unemployment insurance obligations or other public or statutory obligations, performance bonds or other obligations of a like nature, or in connection with bids, tenders, contracts or leases (including in respect of the payment of rent), or in respect of cash earnest money deposits in respect of letters of intent or purchase agreements, in each case Incurred in the ordinary course of business (including Liens to secure letters of credit issued to assure payment of such obligations);

(6) Liens to secure Indebtedness (including Capital Lease Obligations) permitted by Section 4.03(b)(15) covering only the assets acquired with or financed by such Indebtedness;

(7) Liens existing on the date of this Indenture (other than Liens securing Indebtedness incurred pursuant to Section 4.03(b)(1) and any replacement Lien, so long as such replacement Lien is limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the existing Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof);

(8) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(9) Liens imposed by law, such as carriers', warehousemen's, landlord's and mechanics' Liens, in each case, Incurred in the ordinary course of business;

(10) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not Incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(11) Liens created for the benefit of (or to secure) the Securities (or the Subsidiary Guarantees);

(12) Liens to secure any Refinancing Indebtedness permitted to be Incurred under this Indenture; provided, however, that:

(a) the new Lien is limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Indebtedness renewed, refunded, Refinanced, replaced, defeased or discharged with such Refinancing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;

(13) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;

(14) filing of Uniform Commercial Code financing statements as a precautionary measure in connection with operating leases or transactions pursuant to which no Indebtedness is Incurred (including the Accounts Receivable Program);

(15) (i) bankers' Liens and rights of setoff and (ii) Liens arising out of judgments or awards not constituting an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(16) Liens on cash, cash equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;

(17) Liens on specific items of inventory or other goods (and the proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(18) grants of software and other technology licenses in the ordinary course of business;

(19) Liens on the assets of a Foreign Restricted Subsidiary securing Indebtedness of such Foreign Restricted Subsidiary Incurred pursuant to Section 4.03(b)(11);

(20) 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;

(21) Liens on Capital Stock or assets to be sold pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of a Restricted Subsidiary or for any Asset Disposition or disposition of assets not constituting an Asset Disposition, in each case permitted by the terms of this Indenture, pending the closing of such sale or disposition;

(22) Liens securing cash management services in the ordinary course of business;

(23) Liens on the Capital Stock of a joint venture that is not a Restricted Subsidiary;

(24) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business; and

(25) Liens Incurred in the ordinary course of business of the Company or any Restricted Subsidiary of the Company with respect to obligations that do not exceed \$15.0 million at any one time outstanding.

“Person” or “person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Preferred Stock”, as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“principal” of a Security means the principal of the Security plus the premium, if any, payable on the Security which is due or overdue or is to become due at the relevant time.

“Pro Forma Cost Savings” means expense and cost savings that have occurred or that the Company reasonably determines are probable based upon specifically identified actions to be taken within the twelve months of the date of an acquisition so long as the Company shall have certified in an Officers’ Certificate delivered to the Trustee the specific actions to be taken, the cost savings to be achieved from each such action and that such savings have been determined to be probable in the good faith of the signatories. Where specifically provided by this Indenture, the Company shall give pro forma effect to such Pro Forma Cost Savings as if they had been effected as of the beginning of the applicable period.

“Refinance” means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, purchase, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. “Refinanced” and “Refinancing” shall have correlative meanings.

“Refinancing Indebtedness” means Indebtedness that Refinances any Indebtedness of the Company or any Restricted Subsidiary existing on the Issue Date or Incurred in compliance with this Indenture, including Indebtedness that Refinances Refinancing Indebtedness; provided, however, that:

(1) such Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced;

(2) such Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being Refinanced;

(3) such Refinancing Indebtedness has an aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) that is equal to or less than the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding or committed (plus fees and expenses, including any premium and defeasance costs) under the Indebtedness being Refinanced; and

(4) if the Indebtedness being Refinanced is subordinated in right of payment to the Securities, such Refinancing Indebtedness is subordinated in right of payment to the Securities at least to the same extent as the Indebtedness being Refinanced;

provided further, however, that Refinancing Indebtedness shall not include (A) Indebtedness of a Subsidiary that is not a Subsidiary Guarantor that Refinances Indebtedness of the Company or (B) Indebtedness of the Company or a Restricted Subsidiary that Refinances Indebtedness of an Unrestricted Subsidiary.

“Registration Rights Agreement” means the Registration Rights Agreement dated the Issue Date, among the Company, the Subsidiary Guarantors and the Initial Purchasers.

“Related Business” means any business in which the Company or any of the Restricted Subsidiaries was engaged on the Issue Date and any business that in the good faith judgment of the Company is related, ancillary or complementary to such business or is a reasonable extension, development or expansion thereof.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Payment” with respect to any Person means:

(1) the declaration or payment of any dividends or any other distributions of any sort in respect of its Capital Stock (including any payment in connection with any merger or consolidation involving such Person) or similar payment to the direct or indirect holders of its Capital Stock (other than dividends or distributions payable solely in its Capital Stock (other than Disqualified Stock) and dividends or distributions payable solely to the Company or a Restricted Subsidiary, and other than pro rata dividends or other distributions made by a Subsidiary that is not a Wholly Owned Subsidiary to minority stockholders (or owners of an equivalent interest in the case of a Subsidiary that is an entity other than a corporation));

(2) the purchase, redemption or other acquisition or retirement for value of any Capital Stock of the Company held by any Person or of any Capital Stock of a Restricted Subsidiary held by any Affiliate of the Company (other than a Restricted Subsidiary), including in connection with any merger or consolidation and including the exercise of any option to exchange any Capital Stock (other than into Capital Stock of the Company that is not Disqualified Stock);

(3) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment of any Subordinated Obligations of the Company or any Subsidiary Guarantor (other than (a) from the Company or a Restricted Subsidiary or (b) the purchase, repurchase or other acquisition of Subordinated Obligations purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase or other acquisition, or the defeasance of any Subordinated Obligations within one year of the final maturity thereof pursuant to the terms thereof); or

(4) the making of any Investment (other than a Permitted Investment) in any Person.

“Restricted Subsidiary” means any Subsidiary of the Company that is not an Unrestricted Subsidiary.

“Sale/Leaseback Transaction” means an arrangement relating to property owned by the Company or a Restricted Subsidiary on the Issue Date or thereafter acquired by the Company or a Restricted Subsidiary whereby the Company or a Restricted Subsidiary transfers such property to a Person and the Company or a Restricted Subsidiary leases it from such Person.

“SEC” means the U.S. Securities and Exchange Commission.

“Secured Indebtedness” means any Indebtedness (other than intercompany Indebtedness) for borrowed money of the Company and any of its Restricted Subsidiaries secured by a Lien.

“Secured Leverage Ratio” means as of any date of determination, the ratio of (a) the Secured Indebtedness of the Company and its Restricted Subsidiaries, as determined on a consolidated basis on the date of determination after giving effect to the transaction giving rise to the need to calculate the Secured Leverage Ratio to (b) the aggregate amount of EBITDA for the period of the most recent four consecutive fiscal quarters for which internal financial statements are available prior to the date of such determination; provided that EBITDA will be calculated in the manner contemplated by, and subject to all the adjustments provided in, the definition of “Consolidated Coverage Ratio.”

“Securities” means the Securities issued under this Indenture.

“Securities Act” means the Securities Act of 1933, as amended.

“Senior Indebtedness” means with respect to any Person:

(1) Indebtedness of such Person, whether outstanding on the Issue Date or thereafter Incurred; and

(2) all other Obligations of such Person (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to such Person whether or not post-filing interest is allowed in such proceeding) in respect of Indebtedness described in clause (1) above

unless, in the case of clauses (1) and (2), in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such Indebtedness or other Obligations are subordinate in right of payment to the Securities or the Subsidiary Guarantee of such Person, as the case may be.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “Significant Subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“Standard & Poor’s” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

“Stated Maturity” means, with respect to any security or other Indebtedness, the date specified in such security or Indebtedness as the fixed date on which the final payment of principal of such security or Indebtedness is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security or repayment of such Indebtedness at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

“Subordinated Obligation” means, with respect to a Person, any Indebtedness of such Person (whether outstanding on the Issue Date or thereafter Incurred) which is subordinate or junior in right of payment to the Securities or a Subsidiary Guarantee of such Person, as the case may be, pursuant to a written agreement to that effect.

“Subsidiary” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Voting Stock is at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person.

“Subsidiary Guarantee” means a Guarantee by a Subsidiary Guarantor of the Company’s obligations with respect to the Securities and this Indenture.

“Subsidiary Guarantors” means, collectively, the Domestic Restricted Subsidiaries of the Company, subsequent to the Transactions, in existence as of the Issue Date and each other Subsidiary of the Company that thereafter guarantees the Securities pursuant to the terms of this Indenture.

“Temporary Cash Investments” means any of the following:

(1) any investment in direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof;

(2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) maturing, unless such securities are deposited to defease any indebtedness, of not more than one year from the date of acquisition;

(3) time deposits, certificates of deposit and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any commercial bank organized under the laws of the United States or any state thereof and having capital and surplus in excess of \$100.0 million (or the foreign currency equivalent thereof) and whose outstanding debt is rated “A” (or such similar rating) by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act);

(4) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper having the highest rating obtainable from Moody's or S&P and issued by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of the United States, any state thereof or any foreign country recognized by the United States;

(6) securities issued and fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, rated at least "A" by Moody's or S&P and having maturities of not more than one year from the date of acquisition; and

(7) money market funds at least 80% of the assets of which constitute Temporary Cash Investments of the kinds described in clauses (1) through (6) of this definition and which are rated AAA by Moody's or S&P.

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended, as in effect on the Issue Date.

"Transaction Documents" shall mean (i) this Indenture and the Securities, (ii) the Merger Agreement and (iii) the Credit Agreement.

"Transactions" mean, collectively, the transactions to occur on or prior to the Issue Date pursuant to the Transaction Documents, including (a) the consummation of the Merger; (b) the execution, delivery and performance of this Indenture and the issuance of the Securities; (c) the execution, delivery and performance of the Credit Agreement and the initial borrowings thereunder; (d) the Refinancing transactions in connection therewith; and (e) the payment of all fees and expenses to be paid on or prior to the Issue Date and owing in connection with the foregoing.

"Treasury Rate" means, as of any redemption date, as obtained by the Company or an agent thereof, the yield-to-maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two Business Days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data) most nearly equal to the period from the redemption date to July 15, 2015; provided, however, that if the period from the redemption date to July 15, 2015, is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to July 15, 2015, is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

"Trust Officer" means, when used with respect to the Trustee, any officer in the corporate trust office of the Trustee to whom any corporate trust matter is referred because of such officer's knowledge of and familiarity with the particular subject and shall also mean any officer who shall have direct responsibility for the administration of this Indenture.



“Trustee” means Wilmington Trust FSB, until a successor replaces it and, thereafter, means the successor.

“Unrestricted Subsidiary” means:

(1) any Subsidiary of the Company that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Capital Stock or Indebtedness of, or holds any Lien on any property of, the Company or any other Subsidiary of the Company that is not a Subsidiary of the Subsidiary to be so designated; provided, however, that at the time of designation either (A) the Subsidiary to be so designated has total assets of \$1,000 or less or (B) if such Subsidiary has assets greater than \$1,000, such designation would be permitted under Section 4.04. The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, however, that immediately after giving effect to such designation (A) the Company could Incur \$1.00 of additional Indebtedness under Section 4.03(a) and (B) no Default shall have occurred and be continuing following such designation. Any such designation by the Board of Directors shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors giving effect to such designation and an Officers’ Certificate certifying that such designation complied with the foregoing provisions.

“U.S. Dollar Equivalent” means with respect to any monetary amount in a currency other than U.S. dollars, at any time for determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the spot rate for the purchase of U.S. dollars with the applicable foreign currency as published in The Wall Street Journal in the “Exchange Rates” column under the heading “Currency Trading” on the date two Business Days prior to such determination.

“U.S. Government Obligations” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer’s option.

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

“Wholly Owned Subsidiary” means a Restricted Subsidiary all the Capital Stock of which (other than directors’ qualifying shares) is owned by the Company or one or more other Wholly Owned Subsidiaries.

#### SECTION 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Affiliate Transaction”	4.07(a)
“Appendix”	2.01
“Bankruptcy Law”	6.01
“Change of Control Offer”	4.10(b)
“covenant defeasance option”	8.01(b)
“Custodian”	6.01
“Event of Default”	6.01
“Guaranteed Obligations”	10.01
“legal defeasance option”	8.01(b)
“Offer”	4.06(c)
“Offer Amount”	4.06(d)(2)
“Offer Period”	4.06(d)(2)
“Paying Agent”	2.03
“Purchase Date”	4.06(d)(1)
“Registrar”	2.03
“Successor Company”	5.01(a)(1)

SECTION 1.03 Incorporation by Reference of Trust Indenture Act. This Indenture is subject to the mandatory provisions of the TIA which are incorporated by reference in and made a part of this Indenture. The following TIA terms have the following meanings:

“Commission” means the SEC;

“indenture securities” means the Securities and the Subsidiary Guarantees;

“indenture security holder” means a Securityholder;

“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and

“obligor” on the indenture securities means the Company, each Subsidiary Guarantor and any other obligor on the indenture securities.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

SECTION 1.04 Rules of Construction. Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) “or” is not exclusive;

(4) the words “including,” “includes” and similar words shall be deemed to be followed by “without limitation”;

(5) words in the singular include the plural and words in the plural include the singular;

(6) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(7) Secured Indebtedness shall not be deemed to be subordinate or junior to any other Secured Indebtedness merely because it has a junior priority with respect to the same collateral or by virtue of the fact that the holders of such Indebtedness have entered into intercreditor agreements or other arrangements giving one or more of such holders priority over the other holders in collateral held by them;

(8) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP;

(9) the principal amount of any Preferred Stock shall be (A) the maximum liquidation value of such Preferred Stock or (B) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater; and

(10) all references to the date the Securities were originally issued shall refer to the Issue Date.

## ARTICLE 2 THE SECURITIES

SECTION 2.01 Form and Dating . Provisions relating to the Initial Securities, the Private Exchange Securities and the Exchange Securities are set forth in the Rule 144A/Regulation S Appendix attached hereto (the “Appendix”) which is hereby incorporated in, and expressly made part of, this Indenture. The Initial Securities and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A to the Appendix which is hereby incorporated in, and expressly made a part of, this Indenture. The Exchange Securities, the Private Exchange Securities and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit B to the Appendix, which is hereby incorporated in and expressly made a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company and shall not affect the rights, duties or obligations of the Trustee). Each Security shall be dated the date of its authentication. The terms of the Securities set forth in the Appendix and Exhibits A and B thereto are part of the terms of this Indenture.

SECTION 2.02 Execution and Authentication. An Officer shall sign the Securities for the Company by manual or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

On the Issue Date, the Trustee shall authenticate and deliver \$200.0 million aggregate principal amount of the Company's 9.750% Senior Notes due 2018 and, at any time from time to time thereafter, the Trustee shall authenticate and deliver Securities for original issue in an aggregate principal amount specified in such order, in each case upon a written order of the Company signed by an Officer of the Company. Such order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated and, in the case of an issuance of Additional Securities pursuant to Section 2.13 after the Issue Date, shall certify that such issuance is in compliance with Section 4.03.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate the Securities. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

**SECTION 2.03 Registrar and Paying Agent.** The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the "Registrar") and an office or agency where Securities may be presented for payment (the "Paying Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture, which shall incorporate the terms of the TIA. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any Wholly Owned Subsidiary incorporated or organized within The United States of America may act as Paying Agent, Registrar, co-registrar or transfer agent.

The Company initially appoints the Trustee as Registrar and Paying Agent in connection with the Securities. The Company may change the Paying Agent or Registrar without prior notice to the Holders.

**SECTION 2.04 Paying Agent To Hold Money in Trust.** Prior to each due date of the principal and interest on any Security, the Company shall deposit with the Paying Agent a sum sufficient to pay such principal and interest when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall

hold in trust for the benefit of Securityholders or the Trustee all money held by the Paying Agent for the payment of principal of, or interest on, the Securities and shall notify the Trustee of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon complying with this Section, the Paying Agent shall have no further liability for the money delivered to the Trustee.

SECTION 2.05 Securityholder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee, in writing at least five Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

SECTION 2.06 Transfer and Exchange. The Securities shall be issued in registered form and shall be transferable only upon the surrender of a Security for registration of transfer. When a Security is presented to the Registrar or a co-registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements of this Indenture are met. When Securities are presented to the Registrar or a co-registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents in connection with a transfer of Securities. Holders will be required to pay all taxes due on transfer. The Company will not be required to transfer or exchange any Security selected for redemption. Also, the Company will not be required to transfer or exchange any Security for a period of 15 days before a selection of Securities to be redeemed.

SECTION 2.07 Replacement Securities. If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Company, if it determines that the requirements of Section 8-405 of the Uniform Commercial Code are met, shall issue and the Trustee shall authenticate a replacement Security if the Holder satisfies the requirements of the Trustee. If required by the Trustee or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Trustee to protect itself and in the judgment of the Company to protect the Company, the Trustee, the Paying Agent, the Registrar and any co-registrar from any loss which any of them may suffer if a Security is replaced. The Company and the Trustee may charge such Holder for their reasonable out-of-pocket expenses in replacing a Security pursuant to this Section 2.07.

Every replacement Security is an additional Obligation of the Company.

SECTION 2.08 Outstanding Securities. Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation or exchange and those described in this Section 2.08 as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security (subject to the provisions of Section 2.10).

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a bona fide purchaser.

If the Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or maturing, as the case may be, and the Paying Agent is not prohibited from paying such money to the Securityholders on that date pursuant to the terms of this Indenture, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.09 Temporary Securities. Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities and deliver them in exchange for temporary Securities.

SECTION 2.10 Cancellation. The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel (subject to the record retention requirements of the Exchange Act) all Securities surrendered for registration of transfer, exchange, payment or cancellation and deliver a certificate of such cancellation to the Company. The Company may not issue new Securities to replace Securities it has redeemed, paid or delivered to the Trustee for cancellation. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.10.

SECTION 2.11 Defaulted Interest. If the Company defaults in a payment of interest on the Securities, the Company shall pay defaulted interest (plus interest on such defaulted interest to the extent lawful) in any lawful manner. The Company may pay the defaulted interest to the persons who are Securityholders on a subsequent special record date. The Company shall fix or cause to be fixed any such special record date and payment date to the reasonable satisfaction of the Trustee and shall promptly mail to each Securityholder a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

SECTION 2.12 CUSIP Numbers. The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use) and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

SECTION 2.13 Issuance of Additional Securities. After the Issue Date, the Company shall be entitled, subject to its compliance with Section 4.03, to issue Additional Securities under this Indenture, which Securities shall have identical terms as the Initial Securities issued on the Issue Date, other than with respect to the date of issuance, first interest payment date and issue price. All the Securities issued under this Indenture shall be treated as a single class for all purposes of this Indenture.

With respect to any Additional Securities, the Company shall set forth in either (i) a resolution of the Board of Directors and an Officers' Certificate or (ii) a supplemental indenture, in each case a copy or copies of which shall be delivered to the Trustee, the following information:

(1) the aggregate principal amount of such Additional Securities to be authenticated and delivered pursuant to this Indenture and the provision of Section 4.03 that the Company is relying on to issue such Additional Securities;

(2) the issue price, the issue date and the CUSIP number of such Additional Securities; provided, however, that no Additional Securities may be issued unless such Additional Securities are fungible with the Initial Securities for U.S. federal income tax purposes; and

(3) whether such Additional Securities shall be Initial Securities or shall be issued in the form of Exchange Securities as set forth in Exhibit B to the Appendix.

### ARTICLE 3 REDEMPTION

SECTION 3.01 Notices to Trustee. If the Company elects to redeem Securities pursuant to paragraph 5 of the Securities, it shall notify the Trustee in writing of the redemption date, the principal amount of Securities to be redeemed and the paragraph of the Securities pursuant to which the redemption will occur.

The Company shall give each notice to the Trustee provided for in this Section at least 35 days before the redemption date unless the Trustee consents to a shorter period. Such notice shall be accompanied by an Officers' Certificate and an Opinion of Counsel from the Company to the effect that such redemption will comply with the conditions in this Indenture.

SECTION 3.02 Selection of Securities to Be Redeemed. If fewer than all the Securities are to be redeemed, the Trustee shall select the Securities for redemption on a pro rata basis to the extent practicable, or to the extent not so practicable, by lot or by such other method as the Trustee in its sole discretion shall deem to be fair and appropriate (but subject to the requirement that any remaining Securities be in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof), unless otherwise required by law or applicable securities exchange or depositary requirements. The Trustee shall make the selection from outstanding Securities not previously called for redemption. Securities with principal amounts of \$2,000 or less shall be redeemed in whole and not in part. The Trustee may select for redemption portions of the principal of Securities that have denominations larger than \$2,000. Securities and portions of them the Trustee selects shall be in minimum denominations of \$2,000 principal amount and

integral multiples of \$1,000 in excess thereof. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be redeemed.

SECTION 3.03 Notice of Redemption. At least 30 days but not more than 60 days before a date for redemption of Securities, the Company shall mail a notice of redemption by first-class mail to each Holder of Securities to be redeemed at such Holder's registered address; provided, however, that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Securities or a satisfaction and discharge of this Indenture. Notices of redemption may not be conditional.

The notice shall identify the Securities to be redeemed and shall state:

- (1) the redemption date;
- (2) the redemption price;
- (3) the name and address of the Paying Agent;
- (4) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (5) if fewer than all the outstanding Securities are to be redeemed, the identification and principal amounts of the particular Securities to be redeemed;
- (6) that, unless the Company defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Securities (or portion thereof) called for redemption ceases to accrue on and after the redemption date; and
- (7) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense. In such event, the Company shall provide the Trustee with the information required by this Section 3.03 no later than 10 Business Days prior to the date that notice is to be mailed to the Holders (unless the Trustee consents to a shorter period).

SECTION 3.04 Effect of Notice of Redemption. Once notice of redemption is mailed in accordance with Section 3.03, Securities called for redemption become due and payable on the redemption date and at the redemption price plus accrued and unpaid interest to the redemption date. Upon surrender to the Paying Agent, such Securities called for redemption shall be paid at the redemption price stated in the notice, plus accrued interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the related interest payment date). Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.



SECTION 3.05 Deposit of Redemption Price. Prior to the redemption date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued interest on all Securities to be redeemed on that date other than Securities or portions of Securities called for redemption which have been delivered by the Company to the Trustee for cancellation.

SECTION 3.06 Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate for the Holder (at the Company's expense) a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

SECTION 3.07 Mandatory Redemption. The Company shall not be required to make any mandatory redemption or sinking fund payments with respect to the Securities.

#### ARTICLE 4 COVENANTS

SECTION 4.01 Payment of Securities. The Company shall promptly pay the principal of and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. Principal and interest shall be considered paid on the date due if on or before 10:00 a.m. New York City time on such date the Trustee or the Paying Agent holds in accordance with this Indenture money sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Securityholders on that date pursuant to the terms of this Indenture.

The Company shall pay interest on overdue principal at the rate specified therefor in the Securities, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

SECTION 4.02 SEC Reports. Whether or not the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act the Company shall file with the SEC (subject to the next sentence) and provide the Trustee and Holders with such annual reports and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such Sections, such reports to be so filed and provided at the times specified for the filings of such reports under such Sections (including any grace period or extension permitted by the SEC), and containing all the information, audit reports and exhibits required for such reports. The Company will be deemed to have furnished the Trustee and such Holders with such reports if it has filed such reports with the SEC (and such reports are publicly available), or, if applicable, it complies with the last sentence of this paragraph. If, at any time, the Company is not subject to the periodic reporting requirements of the Exchange Act for any reason, the Company will nevertheless continue filing the reports specified in the preceding sentence with the SEC within the time periods required unless the SEC will not accept such a filing. The Company agrees that it will not take any action for the purpose of causing the SEC not to accept such filings. If, notwithstanding the foregoing, the SEC will not accept such filings for any reason, the Company will post the reports specified in the preceding sentence on its website within the time periods that would apply if the Company were required to file those reports with the SEC.

At any time that any of the Company's Subsidiaries are Unrestricted Subsidiaries, then the quarterly and annual financial information required by the preceding paragraph will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company.

In addition, the Company will furnish to the Holders and to prospective investors, upon the requests of such Holders, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Securities are not freely transferable under the Securities Act. The Company also shall comply with the other provisions of TIA § 314(a).

**SECTION 4.03 Limitation on Indebtedness.**

(a) The Company will not, and will not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Indebtedness; provided, however, that the Company and the Subsidiary Guarantors shall be entitled to Incur Indebtedness if, on the date of such Incurrence and after giving effect thereto on a pro forma basis, the Consolidated Coverage Ratio exceeds 2.0 to 1.

(b) Notwithstanding the foregoing paragraph (a), the Company and the Restricted Subsidiaries will be entitled to Incur any or all of the following Indebtedness:

(1) Indebtedness of the Company or any Subsidiary Guarantor pursuant to Credit Facilities in an aggregate principal amount at any one time outstanding under this clause (1) as of any date of Incurrence (after giving pro forma effect to the application of the proceeds of such Incurrence) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Company and its Restricted Subsidiaries thereunder) not to exceed \$250.0 million to be reduced on a dollar-for-dollar basis by the aggregate amount of all Net Available Cash applied by the Company or any Subsidiary Guarantor to repay Indebtedness under Credit Facilities pursuant to Section 4.06;

(2) Indebtedness of the Company owed to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owed to and held by the Company or any Restricted Subsidiary; provided, however, that (A) any subsequent issuance or transfer of any Capital Stock that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Indebtedness (other than to the Company or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Indebtedness by the obligor thereon; (B) if the Company is the obligor on such Indebtedness, such Indebtedness is and expressly subordinated to the prior payment in full in cash of all obligations with respect to the Securities; and (C) if a Subsidiary Guarantor is the obligor on such Indebtedness, such Indebtedness is expressly subordinated to the prior payment in full in cash of all obligations of such obligor with respect to its Subsidiary Guarantee;

- (3) the Securities and the Exchange Securities (other than any Additional Securities);
- (4) Indebtedness outstanding on the Issue Date (other than Indebtedness described in clauses (1), (2) or (3) of this Section 4.03(b));
- (5) Indebtedness of a Restricted Subsidiary Incurred and outstanding on or prior to the date on which such Subsidiary was acquired by the Company (other than Indebtedness Incurred in connection with, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Subsidiary became a Subsidiary or was acquired by the Company); provided, however, that on the date of such acquisition and after giving pro forma effect thereto, either (i) the Company would have been able to Incur at least \$1.00 of additional Indebtedness pursuant to Section 4.03(a) or (ii) the Consolidated Coverage Ratio of the Company would be greater than the Consolidated Coverage Ratio of the Company immediately prior to the date of such acquisition;
- (6) Refinancing Indebtedness in respect of Indebtedness Incurred pursuant to Section 4.03(a) or pursuant to clauses (3), (4), (5), (6), (11), (15) or (16) of this Section 4.03(b);
- (7) Hedging Obligations consisting of (i) Interest Rate Agreements directly related to Indebtedness permitted to be Incurred by the Company and its Restricted Subsidiaries pursuant to this Indenture or (ii) Currency Agreements entered into to manage the foreign exchange exposure of the Company and its Restricted Subsidiaries in the ordinary course of business and not for speculative purposes;
- (8) Obligations in respect of performance, bid and surety bonds and completion guarantees and appeal bonds provided by the Company or any Restricted Subsidiary in the ordinary course of business or pursuant to self-insurance obligations in the ordinary course of business and not in connection with the borrowing of money or the obtaining of advances or credit;
- (9) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five Business Days of its Incurrence;
- (10) the Guarantee by the Company or any of the Subsidiary Guarantors of Indebtedness of the Company or a Restricted Subsidiary of the Company to the extent that the Guaranteed Indebtedness was permitted to be Incurred by another provision of this Section 4.03; provided that if the Indebtedness being Guaranteed is subordinated to or *pari passu* with the Securities or the Subsidiary Guarantees, then the Guarantee must be subordinated or *pari passu*, as applicable, to the same extent as the Indebtedness Guaranteed;

(11) Indebtedness Incurred by Foreign Restricted Subsidiaries in an aggregate principal amount (including all Refinancing Indebtedness Incurred to Refinance any Indebtedness Incurred pursuant to this clause (11)) which, when taken together with all other Indebtedness Incurred pursuant to this clause (11) and outstanding on the date of such Incurrence, does not exceed \$10.0 million;

(12) Indebtedness consisting of customary indemnification, adjustment of purchase price, earn-out or similar obligations of the Company or any Restricted Subsidiary, in each case Incurred in connection with the acquisition or disposition of any assets in accordance with the terms of this Indenture; provided, however, that with respect to any such disposition, the maximum aggregate liability in respect of all such Indebtedness will at no time exceed the gross proceeds actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

(13) Indebtedness consisting of reimbursement obligations with respect to letters of credit, bankers' acceptances, workers' compensation claims or self-insurance, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, in each case, in the ordinary course of business;

(14) Indebtedness representing installment insurance premiums of the Company or any Restricted Subsidiary owing to insurance companies in the ordinary course of business;

(15) Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, Incurred for the purpose of financing all or any part of the purchase price or cost of construction or improvement of property, plant or equipment used in the business of the Company or any Restricted Subsidiary, in an aggregate principal amount (including all Refinancing Indebtedness Incurred to Refinance any Indebtedness Incurred pursuant to this clause (15)) which, when taken together with all other Indebtedness Incurred pursuant to this clause (15) and outstanding on the date of such Incurrence, does not exceed \$15.0 million; and

(16) Indebtedness of the Company or of any of its Restricted Subsidiaries in an aggregate principal amount (including all Refinancing Indebtedness Incurred to Refinance any Indebtedness Incurred pursuant to this clause (16)) which, when taken together with all other Indebtedness of the Company and its Restricted Subsidiaries outstanding on the date of such Incurrence (other than Indebtedness permitted by clauses (1) through (15) above or Section 4.03(a)) does not exceed \$30.0 million.

(c) Notwithstanding the foregoing, neither the Company nor any Subsidiary Guarantor shall Incur any Indebtedness pursuant to Section 4.03(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations of the Company or any Subsidiary Guarantor unless such Indebtedness shall be subordinated to the Securities or the applicable Subsidiary Guarantee to at least the same extent as such Subordinated Obligations.

(d) For purposes of determining compliance with this Section 4.03: (1) Indebtedness under Credit Facilities outstanding on the date on which Securities are first issued and authenticated under this Indenture will initially be deemed to have been Incurred on such date in reliance on the exception provided by Section 4.03(b)(1); and (2) in the event that an item of Indebtedness meets the criteria of more than one of the categories of Indebtedness described in clauses (1) through (16) of Section 4.03(b), or is entitled to be Incurred pursuant to Section 4.03(a), the Company will be permitted to classify such item of Indebtedness on the date of its Incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this covenant.

(e) For purposes of determining compliance with any restriction on the Incurrence of Indebtedness where the Indebtedness Incurred is denominated in a currency other than the U.S. dollar, the amount of such Indebtedness will be the U.S. Dollar Equivalent determined on the date of the Incurrence of such Indebtedness; provided, however, that if any such Indebtedness denominated in a different currency is subject to a Currency Agreement with respect to U.S. dollars covering all principal, premium, if any, and interest payable on such Indebtedness, the amount of such Indebtedness expressed in U.S. dollars will be as provided in such Currency Agreement. The principal amount of any Refinancing Indebtedness Incurred in the same currency as the foreign currency denominated Indebtedness being Refinanced will be the U.S. Dollar Equivalent of the Indebtedness Refinanced, except to the extent that such U.S. Dollar Equivalent was determined based on a Currency Agreement, in which case the Refinancing Indebtedness will be determined in accordance with the preceding sentence. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Company or any Restricted Subsidiary may Incur pursuant to this Section 4.03 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

#### SECTION 4.04 Limitation on Restricted Payments.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, make a Restricted Payment if at the time the Company or such Restricted Subsidiary makes such Restricted Payment:

(1) a Default shall have occurred and be continuing (or would result therefrom);

(2) the Company is not entitled to Incur an additional \$1.00 of Indebtedness under Section 4.03(a); or

(3) the aggregate amount of such Restricted Payment and all other Restricted Payments since the Issue Date would exceed the sum of (without duplication):

(A) 50% of the Consolidated Net Income accrued during the period (treated as one accounting period) from the beginning of the first fiscal quarter commencing subsequent to the Issue Date, to the end of the most recent fiscal quarter for which internal financial statements are then available prior to the date of such Restricted Payment (or, in case such Consolidated Net Income shall be a deficit, minus 100% of such deficit); plus

(B) 100% of the aggregate Net Cash Proceeds received by the Company from the issuance or sale of its Capital Stock (other than Disqualified Stock) subsequent to the Issue Date (other than an issuance or sale to a Subsidiary of the Company and other than an issuance or sale to an employee stock ownership plan or to a trust established by the Company or any of its Subsidiaries for the benefit of their employees) and 100% of any cash capital contribution to common equity received by the Company from its shareholders subsequent to the Issue Date; plus

(C) the amount by which Indebtedness of the Company is reduced on the Company's consolidated balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) subsequent to the Issue Date of any Indebtedness of the Company convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the fair value of any other property, distributed by the Company or a Restricted Subsidiary upon such conversion or exchange); provided, however, that the foregoing amount shall not exceed the Net Cash Proceeds received by the Company or any Restricted Subsidiary from the sale of such Indebtedness (excluding Net Cash Proceeds from sales to a Subsidiary of the Company or to an employee stock ownership plan or to a trust established by the Company or any of its Subsidiaries for the benefit of their employees); plus

(D) an amount equal to the sum of (i) 100% of the aggregate amount of cash and the fair market value, as determined in good faith by the Company, from Investments (other than Permitted Investments) made by the Company or any Restricted Subsidiary in any Person resulting from repurchases, repayments or redemptions of such Investments by such Person, proceeds realized on the sale of such Investment and proceeds representing the return of capital (excluding dividends and distributions to the extent included in Consolidated Net Income), in each case received by the Company or any Restricted Subsidiary, and the amount of any cancellation of any guarantee or other contingent obligation constituting an Investment (other than a Permitted Investment), and (ii) to the extent such Person is an Unrestricted Subsidiary, the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets of such Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary.

(b) The provisions of Section 4.04(a) shall not prohibit:

(1) any Restricted Payment made out of the Net Cash Proceeds of the substantially concurrent sale of, or made by exchange for, Capital Stock of the Company (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Company or an employee stock ownership plan or to a trust established by the Company or any of its Subsidiaries for the benefit of their employees) or a substantially concurrent cash capital contribution received by the Company from its shareholders; provided, however, that (A) such Restricted Payment shall be excluded in future calculations of the amount of Restricted Payments and (B) the Net Cash Proceeds from such sale or such cash capital contribution (to the extent so used for such Restricted Payment) shall be excluded from the calculation of amounts under Section 4.04(a)(3)(B);

(2) any purchase, repurchase, redemption, defeasance, satisfaction, discharge or other acquisition or retirement for value of Subordinated Obligations of the Company or any Subsidiary Guarantor made by exchange for, or out of the proceeds of the substantially concurrent Incurrence of, Indebtedness of such Person which is permitted to be Incurred pursuant to Section 4.03; provided, however, that such purchase, repurchase, redemption, defeasance, satisfaction, discharge or other acquisition or retirement for value shall be excluded in future calculations of the amount of Restricted Payments;

(3) dividends paid within 60 days after the date of declaration thereof if at such date of declaration such dividend would have complied with this Section 4.04; provided, however, that such dividend shall be included in future calculations of the amount of Restricted Payments;

(4) the repurchase, redemption, retirement or other acquisition of shares of Capital Stock of the Company or any of its Subsidiaries from employees, former employees, directors or former directors of the Company or any of its Subsidiaries (or permitted transferees of such employees, former employees, directors or former directors), pursuant to the terms of the agreements (including employment agreements) or plans (or amendments thereto) approved by the Board of Directors under which such individuals purchase or sell or are granted the option to purchase or sell, shares of such Capital Stock; provided, however, that the aggregate amount of such repurchases and other acquisitions shall not exceed \$1.0 million in any calendar year; provided further, however, that such repurchases and other acquisitions shall be excluded in future calculations of the amount of Restricted Payments;

(5) payments of dividends on Disqualified Stock permitted to be issued pursuant to Section 4.03; provided, however, that at the time of the declaration of such dividend, no Default shall have occurred and be continuing (or result therefrom); provided further that such dividends shall be excluded in future calculations of the amount of Restricted Payments;

(6) repurchases of Capital Stock deemed to occur (i) upon exercise of stock options if such Capital Stock represents a portion of the exercise price of such options or (ii) in connection with withholding or similar taxes payable by any future, present or former employee, director or officer; provided, however, that such Restricted Payments shall be excluded in future calculations of the amount of Restricted Payments;

(7) payments in respect of the repurchase, redemption or other acquisition or retirement for value of Capital Stock of the Company; provided, however, that the aggregate amount of such repurchases, redemptions, acquisitions or retirements shall not exceed \$2.0 million in any fiscal year; provided further, however, that such payments shall be included in future calculations of the amount of Restricted Payments;

(8) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company; provided, however, that such payments shall be excluded in the calculation of the amount of Restricted Payments;

(9) in the event of a Change of Control, and if no Default shall have occurred and be continuing, the payment, purchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations of the Company or any Subsidiary Guarantor; provided, however, that prior to such payment, purchase, redemption, defeasance or other acquisition or retirement, the Company (or a third party to the extent permitted by this Indenture) has made a Change of Control Offer with respect to the Securities as a result of such Change of Control and has repurchased all Securities validly tendered and not withdrawn in connection with such Change of Control Offer; provided further, however, that such payments, purchases, redemptions, defeasances or other acquisitions or retirements shall be included in the calculation of the amount of Restricted Payments;

(10) so long as no Default has occurred and is continuing or would be caused thereby, the repurchase, redemption or other acquisition or retirement for value of Subordinated Obligations with any excess Net Available Cash remaining after the consummation of an offer to purchase Securities pursuant to Section 4.06; provided, however, that such repurchase, redemption or other acquisition or retirement shall be excluded in the calculation of the amount of Restricted Payments;

(11) that portion of Investments the payment for which consists exclusively of the Company's Capital Stock (other than Disqualified Stock); provided, however, that such payments shall be excluded in future calculations of the amount of Restricted Payments; and

(12) payments not otherwise permitted by clauses (1) through (11) of this Section 4.04(b) in an amount which, when taken together with all payments made pursuant to this clause (12), do not exceed \$10.0 million; provided, however, that such payments shall be excluded in future calculations of the amount of Restricted Payments.

**SECTION 4.05 Limitation on Restrictions on Distributions from Restricted Subsidiaries.** The Company shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to (a) pay dividends or make any other distributions on its Capital Stock to the Company or a Restricted Subsidiary or pay any Indebtedness owed to the Company or a Restricted Subsidiary, (b) make any loans or advances to the Company or a Restricted Subsidiary or (c) transfer any of its property or assets to the Company or a Restricted Subsidiary, except:

(1) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date;



(2) any encumbrance or restriction with respect to a Restricted Subsidiary pursuant to an agreement relating to any Indebtedness Incurred by such Restricted Subsidiary on or prior to the date on which such Restricted Subsidiary was acquired by the Company (other than Indebtedness Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Company) and outstanding on such date;

(3) any encumbrance or restriction pursuant to an agreement effecting a Refinancing of Indebtedness Incurred pursuant to an agreement referred to in Section 4.05(1) or this clause (3) or contained in any amendment to an agreement referred to in Section 4.05(1) or this clause (3); provided, however, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such refinancing agreement or amendment are not materially less favorable taken as a whole to the Holders than encumbrances and restrictions with respect to such Restricted Subsidiary contained in such predecessor agreements as determined by the Company in good faith;

(4) any encumbrance or restriction existing under or by reason of provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements (including agreements entered into in connection with a Restricted Investment) entered into with the approval of the Company's Board of Directors if the assets subject to any such agreement are greater than \$1.0 million in the aggregate, which limitation is applicable only to the assets that are the subject of such agreements;

(5) any encumbrance or restriction consisting of requirements with respect to cash or other deposits or net worth imposed by customers or required by insurance, surety or bonding companies, in each case, under contracts entered into in the ordinary course of business;

(6) any encumbrance imposed pursuant to an agreement evidencing Liens permitted to be Incurred under Section 4.12 that limits the right of the Company or any Restricted Subsidiary to transfer or dispose of the assets subject to such Liens;

(7) any encumbrance or restriction existing under, by reason of or with respect to customary supermajority voting provisions and customary provisions with respect to the disposition or distribution of assets or property, in each case, contained in joint venture agreements;

(8) customary non-assignment provisions and restrictions on subletting in any contract, license or lease of the Company or any Restricted Subsidiary entered into in the ordinary course of business of the Company or such Restricted Subsidiary;

(9) any encumbrance or restriction contained in security agreements or mortgages securing Indebtedness of a Restricted Subsidiary to the extent such encumbrance or restriction restricts the transfer of the property subject to such security agreements or mortgages;

(10) any encumbrance or restriction with respect to property acquired by the Company or a Restricted Subsidiary in effect at the time of such acquisition, so long as such restriction or encumbrance relates solely to the property acquired and was not created in anticipation of such acquisition;

(11) restrictions set forth in agreements governing Indebtedness permitted to be incurred pursuant to Section 4.03(a) so long as such encumbrances or restrictions are not materially more restrictive, taken as a whole, than those restrictions imposed by this Indenture;

(12) encumbrances or restrictions set forth in agreements governing Indebtedness permitted to be incurred pursuant to Section 4.03(b)(11) so long as any such encumbrances or restrictions apply only to the applicable Restricted Foreign Subsidiary or the assets thereof; and

(13) any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) of this Section 4.05 imposed by any amendments, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (12) above; provided, however, that such amendments, replacements or refinancings are, in the good faith judgment of the Company, not materially more restrictive taken as a whole with respect to such dividend and other restrictions than those contained in such contracts, instruments or obligations prior to such amendment, replacement or refinancing.

#### SECTION 4.06 Limitation on Sales of Assets and Subsidiary Stock.

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Disposition unless:

(1) the Company or such Restricted Subsidiary receives consideration at the time of such Asset Disposition at least equal to the fair market value (including as to the value of all non-cash consideration) of the shares and assets subject to such Asset Disposition, as determined in good faith by the Company and, if such Asset Disposition involves consideration in excess of \$5.0 million, as evidenced by a resolution of the Board of Directors;

(2) at least 75% of the consideration thereof received by the Company or such Restricted Subsidiary is in the form of cash, Temporary Cash Investments or cash equivalents; and

(3) an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied by the Company (or such Restricted Subsidiary, as the case may be):

(A) to prepay, repay, redeem or purchase Indebtedness of the Company or a Subsidiary Guarantor pursuant to a Credit Facility that is secured by a Lien (in each case other than Indebtedness owed to the Company or an Affiliate of the Company) within one year from the later of the date of such Asset Disposition or the receipt of such Net Available Cash;

(B) to acquire or construct Additional Assets in each case within one year from the later of the date of such Asset Disposition or the receipt of such Net Available Cash (or to enter into a binding commitment to so acquire or construct Additional Assets so long as such acquisition of construction is effected within 180 days after the date of such commitment); and

(C) to make an offer to the Holders (and to holders of other Senior Indebtedness of the Company or of a Subsidiary Guarantor designated by the Company) to purchase Securities (and such other Senior Indebtedness) pursuant to and subject to the conditions contained in this Indenture;

provided, however, that in connection with any prepayment, repayment or purchase of Indebtedness pursuant to clause (A) or (C) above, the Company or such Restricted Subsidiary shall permanently retire such Indebtedness and shall cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased.

Notwithstanding the foregoing provisions of this Section 4.06, the Company and the Restricted Subsidiaries will not be required to apply any Net Available Cash in accordance with this Section 4.06 except to the extent that the aggregate Net Available Cash from all Asset Dispositions which is not applied in accordance with this Section 4.06 exceeds \$15.0 million. Pending application of Net Available Cash pursuant to this Section 4.06, such Net Available Cash shall be invested in Temporary Cash Investments or applied to temporarily reduce revolving credit Indebtedness.

(b) For the purposes of this Section 4.06, the following are deemed to be cash equivalents:

(1) the assumption of Indebtedness of the Company or of a Subsidiary Guarantor (other than obligations in respect of Disqualified Stock of the Company) or any Restricted Subsidiary (other than obligations in respect of Disqualified Stock or Preferred Stock of a Subsidiary Guarantor) and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition; and

(2) securities received by the Company or any Restricted Subsidiary from the transferee that are promptly converted by the Company or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion.

(c) In the event of an Asset Disposition that requires an offer to purchase Securities (and other Senior Indebtedness of the Company or of a Subsidiary Guarantor) pursuant to Section 4.06(a)(3)(C) above, the Company shall purchase Securities tendered pursuant to an offer by the Company for the Securities (and such other Senior Indebtedness) (the "Offer") at a purchase price of 100% (or at a greater price, in the case of the Securities, in the discretion of the Company) of their principal amount (or, in the event such other Senior Indebtedness was issued with original issue discount, 100% of the accreted value thereof) without premium, plus accrued but unpaid interest (or, in respect of such other Senior Indebtedness, such lesser price, if any, as may be provided for by the terms of such Senior Indebtedness) in accordance with the procedures (including prorating in the event of oversubscription) set forth in this Section 4.06; provided that the procedures for making an offer to holders of other Senior Indebtedness will be as provided for by the terms of such other Senior Indebtedness. If the aggregate purchase price of the Indebtedness tendered pursuant to the Offer exceeds the Net Available Cash allotted to their purchase, the Company will select the Indebtedness to be purchased on a pro rata basis but in round denominations, which in the case of the Securities will be denominations of \$2,000 principal amount or \$1,000 multiples in excess thereof. The Company shall not be required to make such an Offer pursuant to this Section 4.06 unless the Net Available Cash available therefor (after application of such proceeds as provided in clauses (a)(3)(A) and (a)(3)(B) of this Section 4.06 and after giving effect to any purchases of Securities by the Company made in the open market or otherwise occurring after the date of such Asset Disposition), together with the aggregate Net Available Cash from all previous Asset Dispositions not applied in accordance with this covenant, exceeds \$15.0 million (with any lesser amount being carried forward for purposes of determining whether such an Offer is required with respect to the Net Available Cash from any subsequent Asset Disposition). Upon completion of such an Offer, Net Available Cash will be deemed to be reduced by the aggregate amount of such Offer. If any Net Available Cash remains after the completion of any such Offer, the Company may use such Net Available Cash for any purpose not otherwise prohibited by this Indenture.

(d)(1) Promptly, and in any event within 10 days after the Company becomes obligated to make an Offer, the Company shall deliver to the Trustee and send, by first-class mail to each Holder, a written notice stating that the Holder may elect to have its Securities purchased by the Company either in whole or in part (subject to prorating as described in Section 4.06(c) in the event the Offer is oversubscribed) in denominations of \$2,000 principal amount or \$1,000 multiples in excess thereof, at the applicable purchase price. The notice shall specify a purchase date not less than 30 days nor more than 60 days after the date of such notice (the "Purchase Date") and shall contain such information concerning the business of the Company which the Company in good faith believes will enable such Holders to make an informed decision (which at a minimum will include (or will incorporate and describe how electronic copies thereof may be accessed) (A) the most recently filed Annual Report on Form 10-K (including audited consolidated financial statements) of the Company, the most recent subsequently filed Quarterly Report on Form 10-Q and any Current Report on Form 8-K of the Company filed subsequent to such Quarterly Report, other than Current Reports describing Asset Dispositions otherwise described in the offering materials (or corresponding successor reports), (B) a description of material developments in the Company's business subsequent to the date of the latest of such Reports, and (C) if material, appropriate pro forma financial information) and all instructions and materials necessary to tender Securities pursuant to the Offer, together with the information contained in clause (3).

(2) Not later than the date upon which written notice of an Offer is delivered to the Trustee as provided above, the Company shall deliver to the Trustee an Officers' Certificate as to (A) the amount of the Offer (the "Offer Amount"), including information as to any other Senior Indebtedness included in the Offer, (B) the allocation of the Net Available Cash from the Asset Dispositions pursuant to which such Offer is being made and (C) the compliance of such allocation with the provisions of Section 4.06(a) and (c). On such date, the Company shall also irrevocably deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust) in Temporary Cash Investments, maturing on the last Business Day prior to the Purchase Date or on the Purchase Date if funds are immediately available by open of business, an amount equal to the Offer Amount to be held for payment in accordance with the provisions of this Section. If the Offer includes other Senior Indebtedness, the deposit described in the preceding sentence may be made with any other paying agent pursuant to arrangements satisfactory to the Trustee. Upon the expiration of the period for which the Offer remains open (the "Offer Period"), the Company shall deliver to the Trustee for cancellation the Securities or portions thereof which have been properly tendered to and are to be accepted by the Company. The Trustee shall, on the Purchase Date, mail or deliver payment (or cause the delivery of payment) to each tendering Holder in the amount of the purchase price. In the event that the aggregate purchase price of the Securities delivered by the Company to the Trustee is less than the Offer Amount applicable to the Securities, the Trustee shall deliver the excess to the Company immediately after the expiration of the Offer Period for application in accordance with this Section 4.06.

(3) Holders electing to have a Security purchased shall be required to surrender the Security, with an appropriate form duly completed, to the Company at the address specified in the notice at least three Business Days prior to the Purchase Date. Holders shall be entitled to withdraw their election if the Trustee or the Company receives not later than one Business Day prior to the Purchase Date, a telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security which was delivered for purchase by the Holder and a statement that such Holder is withdrawing its election to have such Security purchased. Holders whose Securities are purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered.

(4) At the time the Company delivers Securities to the Trustee which are to be accepted for purchase, the Company shall also deliver an Officers' Certificate stating that such Securities are to be accepted by the Company pursuant to and in accordance with the terms of this Section. A Security shall be deemed to have been accepted for purchase at the time the Trustee, directly or through an agent, mails or delivers payment therefor to the surrendering Holder.

(e) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Securities pursuant to this Section 4.06. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.06, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.06 by virtue of its compliance with such securities laws or regulations.

**SECTION 4.07 Limitation on Affiliate Transactions.**

(a) The Company shall not, and shall not permit any Restricted Subsidiary to, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, employee compensation arrangements or the rendering of any service) with, or for the benefit of, any Affiliate of the Company (an "Affiliate Transaction") unless:

(1) the terms of the Affiliate Transaction are no less favorable to the Company or such Restricted Subsidiary than those that could be obtained at the time of the Affiliate Transaction in arm's-length dealings with a Person who is not an Affiliate;

(2) if such Affiliate Transaction involves an amount in excess of \$10.0 million, the terms of the Affiliate Transaction are set forth in writing and a majority of the non-employee directors of the Company disinterested with respect to such Affiliate Transaction have determined in good faith that the criteria set forth in clause (1) are satisfied and have approved the relevant Affiliate Transaction as evidenced by a resolution of the Board of Directors; and

(3) if such Affiliate Transaction involves an amount in excess of \$20.0 million, the Board of Directors shall also have received a written opinion from an Independent Qualified Party to the effect that such Affiliate Transaction is fair, from a financial standpoint, to the Company and its Restricted Subsidiaries or is not less favorable to the Company and its Restricted Subsidiaries than could reasonably be expected to be obtained at the time in an arm's-length transaction with a Person who was not an Affiliate.

(b) The provisions of Section 4.07(a) shall not prohibit:

(1) any Investment (including a Permitted Investment) or other Restricted Payment, in each case permitted to be made pursuant to Section 4.04;

(2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options, severance agreements, bonus plans, stock based compensation, employee benefit plans, incentive plans and stock ownership plans approved by the Board of Directors;

(3) loans or advances to employees in the ordinary course of business in accordance with the past practices of the Company or its Restricted Subsidiaries, but in any event not to exceed \$1.0 million in the aggregate outstanding at any one time;

(4) the payment of reasonable fees and reimbursements of expenses to directors of the Company and its Restricted Subsidiaries who are not employees of the Company or its Restricted Subsidiaries;

(5) any transaction with a Restricted Subsidiary or joint venture or similar entity which would constitute an Affiliate Transaction solely because the Company or a Restricted Subsidiary owns an equity interest in or otherwise controls such Restricted Subsidiary, joint venture or similar entity;

(6) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Company; and

(7) indemnities of officers, directors and employees of the Company or any Restricted Subsidiaries permitted or required by charter, bylaw or statutory provisions.

SECTION 4.08 Limitation on Line of Business. The Company shall not, and shall not permit any Restricted Subsidiary, to engage in any business other than a Related Business.

SECTION 4.09 Limitation on Sale/Leaseback Transactions. The Company shall not, and shall not permit any Restricted Subsidiary to, enter into any Sale/Leaseback Transaction with respect to any property unless:

(1) the Company or such Restricted Subsidiary would be entitled to (A) Incur Indebtedness in an amount equal to the Attributable Debt with respect to such Sale/Leaseback Transaction pursuant to Section 4.03 and (B) create a Lien on such property securing such Attributable Debt without equally and ratably securing the Securities pursuant to the covenant described under Section 4.12;

(2) the net proceeds received by the Company or any Restricted Subsidiary in connection with such Sale/ Leaseback Transaction are at least equal to the fair market value (as determined by the Board of Directors) of such property; and

(3) the company applies the proceeds of such transaction in compliance with Section 4.06.

SECTION 4.10 Change of Control.

(a) Upon the occurrence of a Change of Control, each Holder shall have the right to require that the Company repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of such Holder's Securities at a purchase price in cash equal to 101 % of the principal amount thereof on the date of purchase plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), in accordance with the terms contemplated in Section 4.10(b).

(b) Within 30 days following any Change of Control, the Company shall mail a notice to each Holder with a copy to the Trustee (the “Change of Control Offer”) stating (or providing):

(1) that a Change of Control has occurred and that such Holder has the right to require the Company to purchase such Holder’s Securities at a purchase price in cash equal to 101% of the principal amount thereof on the date of purchase, plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of Holders of record on the relevant record date to receive interest on the relevant interest payment date);

(2) a description of such Change of Control;

(3) the purchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed); and

(4) the instructions, as determined by the Company, consistent with this Section 4.10, that a Holder must follow in order to have its Securities purchased.

(c) Holders electing to have a Security purchased shall be required to surrender the Security, with an appropriate form duly completed, to the Company at the address specified in the notice at least three Business Days prior to the purchase date. Holders shall be entitled to withdraw their election if the Trustee or the Company receives not later than one Business Day prior to the purchase date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security which was delivered for purchase by the Holder and a statement that such Holder is withdrawing his election to have such Security purchased.

(d) On the purchase date, all Securities purchased by the Company under this Section shall be delivered by the Company to the Trustee for cancellation, and the Company shall pay the purchase price plus accrued and unpaid interest, if any, to the Holders entitled thereto.

(e) Notwithstanding the foregoing provisions of this Section, the Company shall not be required to make a Change of Control Offer following a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section applicable to a Change of Control Offer made by the Company and purchases all Securities validly tendered and not withdrawn under such Change of Control Offer (it being understood that such third-party may make a Change of Control Offer that is conditioned on and prior to the occurrence of a Change of Control pursuant to this clause (e)(1)) or (2) notice of redemption has been given pursuant to this Indenture as described in Sections 5 and 6 of the Securities, unless and until there is a default in payment of the applicable redemption price.

(f) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Securities pursuant to this Section 4.10. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.10, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.10 by virtue of its compliance with such securities laws or regulations.



SECTION 4.11 Future Guarantors. The Company shall cause each Domestic Restricted Subsidiary created or acquired after the Issue Date to within five Business Days become a Subsidiary Guarantor and to execute and deliver to the Trustee a Guarantee Agreement pursuant to which such Subsidiary shall Guarantee payment of the Securities on the same terms and conditions as those set forth in this Indenture; provided that any such Domestic Restricted Subsidiary that constitutes an Immaterial Subsidiary need not become a Subsidiary Guarantor until such time as it ceases to be an Immaterial Subsidiary.

SECTION 4.12 Limitation on Liens. The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind securing Indebtedness or trade payables on any asset now owned or hereafter acquired, except Permitted Liens.

SECTION 4.13 Compliance Certificate. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Company they would normally have knowledge of any Default or Event of Default and whether or not the signers know of any Default or Event of Default that occurred during such period. If they do, the certificate shall describe the Default or Event of Default, its status and what action the Company is taking or proposes to take with respect thereto. The Company also shall comply with TIA § 314(a)(4).

## ARTICLE 5 SUCCESSOR COMPANY

### SECTION 5.01 When Company May Merge or Transfer Assets.

(a) The Company shall not consolidate with or merge with or into, or convey, transfer or lease, in one transaction or a series of transactions, directly or indirectly, all or substantially all its assets to, any Person, unless:

(1) the resulting, surviving or transferee Person (the "Successor Company") shall be a Person organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and the Successor Company (if not the Company) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee all the obligations of the Company under the Securities and this Indenture;

(2) immediately after giving pro forma effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Company or any Subsidiary as a result of such transaction as having been Incurred by such Successor Company or such Subsidiary at the time of such transaction), no Default shall have occurred and be continuing;

(3) immediately after giving pro forma effect to such transaction, either (i) the Successor Company would be able to Incur an additional \$ 1.00 of Indebtedness pursuant to Section 4.03(a) or (ii) the Consolidated Coverage Ratio of the Successor Company would be equal to or greater than the Consolidated Coverage Ratio immediately prior to such transaction; and

(4) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture;

provided, however, that clause (3) shall not be applicable to (A) a Restricted Subsidiary consolidating with, merging into or transferring all or part of its properties and assets to the Company or (B) the Company merging with, or selling all or substantially all of its assets to, an Affiliate of the Company solely for the purpose and with the sole effect of reincorporating the Company in another jurisdiction.

For purposes of this Section 5.01, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The Successor Company shall be the successor to the Company and shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, and the predecessor Company, except in the case of a lease, shall be released from the obligation to pay the principal of and interest on the Securities.

(b) The Company shall not permit any Subsidiary Guarantor to consolidate with or merge with or into, or convey, transfer or lease, in one transaction or a series of transactions, all or substantially all of its assets to any Person unless:

(1) except in the case of a Subsidiary Guarantor that has been disposed of in its entirety to another Person (other than to the Company or an Affiliate of the Company), whether through a merger, consolidation or sale of Capital Stock or assets, if in connection therewith the Company provides an Officers' Certificate to the Trustee stating that the Company shall comply with its obligations under Section 4.06 in respect of such disposition, the resulting, surviving or transferee Person (if not such Subsidiary) shall be a Person organized and existing under the laws of the jurisdiction under which such Subsidiary was organized or under the laws of the United States of America, or any State thereof or the District of Columbia, and such Person shall expressly assume, by a Guarantee Agreement, all the obligations of such Subsidiary, if any, under its Subsidiary Guarantee;

(2) immediately after giving effect to such transaction or transactions on a pro forma basis (and treating any Indebtedness which becomes an obligation of the resulting, surviving or transferee Person as a result of such transaction as having been issued by such Person at the time of such transaction), no Default shall have occurred and be continuing; and

(3) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such Guarantee Agreement, if any, complies with this Indenture.

(c) The foregoing paragraph notwithstanding, (a) any Guarantor may merge into or transfer all or part of its properties and assets to another Guarantor or the Company and (b) any Guarantor may merge with, or sell all or substantially all of its assets to, an Affiliate solely for the purpose and with the sole effect of reincorporating in another jurisdiction or solely for the purpose and with the sole effect of changing its form of organization.

ARTICLE 6  
DEFAULTS AND REMEDIES

SECTION 6.01 Events of Default. Each of the following is an “Event of Default”:

- (1) a default in the payment of interest, if any, on the Securities when due, continued for 30 days;
- (2) a default in the payment of principal of, or premium, if any, on, any Security when due at its Stated Maturity, upon optional redemption, upon required purchase, upon declaration of acceleration or otherwise;
- (3) the failure by the Company to comply with its obligations under Section 5.01;
- (4) the failure by the Company or any Subsidiary Guarantor to comply for 60 days (or 90 days in the case of Section 4.02) after notice with its other agreements contained in this Indenture;
- (5) Indebtedness of the Company, any Subsidiary Guarantor or any Significant Subsidiary is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds \$25.0 million;
- (6) a Subsidiary Guarantor, the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
  - (A) commences a voluntary case;
  - (B) consents to the entry of an order for relief against it in an involuntary case;
  - (C) consents to the appointment of a Custodian of it or for any substantial part of its property; or
  - (D) makes a general assignment for the benefit of its creditors; or
  - (E) takes any comparable action under any foreign laws relating to insolvency;

(7) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (A) is for relief against a Subsidiary Guarantor, the Company or any Significant Subsidiary in an involuntary case;
- (B) appoints a Custodian of a Subsidiary Guarantor, the Company or any Significant Subsidiary or for any substantial part of its property; or
- (C) orders the winding up or liquidation of a Subsidiary Guarantor, the Company or any Significant Subsidiary; or
- (D) any similar relief is granted under any foreign laws and the order or decree remains unstayed and in effect for 60 days;

(8) any judgment or decree for the payment of money in excess of \$25.0 million (net of any amounts insured by a solvent third party that has not disclaimed coverage) is entered against the Company, a Subsidiary Guarantor or any Significant Subsidiary, remains outstanding for a period of 60 consecutive days following such judgment and is not discharged, waived or stayed; or

(9) any Subsidiary Guarantee ceases to be in full force and effect (other than in accordance with the terms of such Subsidiary Guarantee and this Indenture) or any Subsidiary Guarantor denies or disaffirms its obligations under its Subsidiary Guarantee.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term "Bankruptcy Law" means Title 11, United States Code, or any similar Federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

However, a Default under clause (4) shall not constitute an Event of Default until the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Securities notify the Company of the Default and the Company does not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default".

The Company shall deliver to the Trustee, within 10 days after becoming aware thereof, written notice in the form of an Officers' Certificate of any Event of Default under clauses (3), (5), (8) or (9) and any Default under clause (4), its status and what action the Company is taking or proposes to take with respect thereto.

**SECTION 6.02 Acceleration.** If an Event of Default (other than an Event of Default specified in Section 6.01(6) or (7) with respect to the Company) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the outstanding Securities by notice to the Company and the Trustee, may declare the principal of and accrued but unpaid interest on all the Securities to be due and payable. Upon such a declaration, such principal and interest shall be due and payable immediately. If an Event of Default specified in Section 6.01(6) or (7) with respect to the Company occurs and is continuing, the principal of and interest on all the Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholders. The Holders of a majority in aggregate principal amount of the outstanding Securities by notice to the Trustee may rescind any such acceleration with respect to the Securities and its consequences if (a) the rescission would not conflict with any judgment or decree, (b) all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of acceleration and (c) the Company has paid all other amounts due under this Indenture, including all amounts under Section 7.07. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

**SECTION 6.03 Other Remedies.** If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

**SECTION 6.04 Waiver of Past Defaults.** The Holders of a majority in aggregate principal amount of the Securities by notice to the Trustee may waive an existing Default or Event of Default and its consequences except (a) a Default or Event of Default in the payment of the principal of or interest on a Security, (b) a Default or Event of Default arising from the failure to redeem or purchase any Security when required pursuant to this Indenture or (c) a Default or Event of Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Securityholder affected. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

**SECTION 6.05 Control by Majority.** The Holders of a majority in aggregate principal amount of the outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or is unduly prejudicial to the rights of any other Holder of a Security or that would expose the Trustee to personal liability; provided, however, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.06 Limitation on Suits. The Trustee shall be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium, if any, or interest, if any, when due, no Securityholder may pursue any remedy with respect to this Indenture or the Securities unless:

- (1) such Holder has previously given the Trustee notice that an Event of Default is continuing;
- (2) Holders of at least 25% in aggregate principal amount of the outstanding Securities have requested the Trustee to pursue the remedy;
- (3) such Holders have offered the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (4) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and
- (5) Holders of a majority in aggregate principal amount of the outstanding Securities have not given the Trustee a direction inconsistent with the request within such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over another Securityholder.

SECTION 6.07 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest on the Securities held by such Holder, on or after the respective due dates expressed in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.08 Collection Suit by Trustee. If an Event of Default specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.07.

SECTION 6.09 Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Securityholders allowed in any judicial proceedings relative to the Company or any Subsidiary Guarantor, its creditors or its property, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses,

disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.07. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding. The Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

SECTION 6.10 Priorities. If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

FIRST: to the Trustee for all amounts due under Section 7.07;

SECOND: to Securityholders for amounts due and unpaid on the Securities for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section. At least 15 days before such record date, the Company shall mail to each Securityholder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Securities.

SECTION 6.12 Waiver of Stay or Extension Laws. The Company (to the extent it may lawfully do so) shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 7  
TRUSTEE

SECTION 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificate or opinion, which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the same to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own wilful misconduct, except that:

(1) this paragraph shall not be construed to limit the effect of paragraph (b) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(4) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not satisfactorily assured to it.

(d) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(e) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(f) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.



SECTION 7.02 Rights of Trustee. Except as otherwise provided in Section 7.01:

(a) The Trustee may rely on and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in the absence of bad faith on its part in reliance on the Officers' Certificate or Opinion of Counsel.

(c) The Trustee may execute any of the trusts or powers hereunder or act through agents or attorneys and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(e) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to it against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney.

(g) Absent receipt of a notice of additional interest as described in paragraph 1 of the Securities, the Trustee shall be entitled to assume that no additional interest is payable on the immediately succeeding interest payment date.

SECTION 7.03 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

SECTION 7.04 Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the recitals contained herein or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement of the Company in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

SECTION 7.05 Notice of Defaults. If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to each Securityholder notice of the Default or Event of Default within 90 days after it occurs, or, if later, after a Trust Officer of the Trustee has knowledge of such Default or Event of Default, in any case unless such Default or Event of Default shall have been cured or waived. Except in the case of a Default or Event of Default in payment of principal of or interest on any Security (including payments pursuant to the mandatory redemption provisions of such Security, if any), the Trustee may withhold the notice and shall be protected in withholding such notice if and so long as a committee of its Trust Officers determines that withholding notice is not opposed to the interests of Securityholders.

SECTION 7.06 Reports by Trustee to Holders. As promptly as reasonably practicable after each May 15 beginning with the May 15 following the date of this Indenture the Trustee shall mail to each Securityholder a brief report dated as of May 15 that complies with TIA § 313(a). The Trustee also shall comply with TIA § 313(b).

A copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and each stock exchange (if any) on which the Securities are listed. The Company agrees to notify promptly the Trustee in writing whenever the Securities become listed on any stock exchange and of any delisting thereof.

SECTION 7.07 Compensation and Indemnity. The Company shall pay to the Trustee from time to time compensation for its services as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable expenses, disbursements and advances incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Company shall indemnify the Trustee for, and hold it harmless against, any and all loss, liability or expense (including attorneys' fees) incurred by it arising out of or in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel. The Company need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct or negligence.

To secure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Securities.

The Company's payment obligations pursuant to this Section shall survive the discharge of this Indenture. When the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(6) or (7) with respect to the Company, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

**SECTION 7.08 Replacement of Trustee.** The Trustee may resign at any time by so notifying the Company. The Holders of a majority in aggregate principal amount of the Securities may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Company shall remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged bankrupt or insolvent;
- (3) a receiver or other public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns, is removed by the Company or by the Holders of a majority in aggregate principal amount of the Securities and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Securityholders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in aggregate principal amount of the Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

SECTION 7.09 Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

In case at the time such successor or successors to the Trustee by merger, conversion or consolidation shall succeed to the trusts created by this Indenture any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.10 Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA § 310(a). The Trustee shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b); provided, however, that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in TIA § 310(b)(1) are met.

SECTION 7.11 Preferential Collection of Claims Against Company. The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

## ARTICLE 8 DISCHARGE OF INDENTURE; DEFEASANCE

### SECTION 8.01 Discharge of Liability on Securities; Defeasance.

(a) When (1) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (2) all outstanding Securities have become due and payable, whether at maturity or on a redemption date as a result of the mailing of a notice of redemption pursuant to Article 3 hereof or (3) all outstanding Securities shall become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee and, in the case of clauses (2) and (3) of this Section 8.01, the Company irrevocably deposits with the Trustee funds sufficient to pay at maturity or upon redemption all outstanding Securities, including interest thereon to maturity or such redemption date (other than Securities replaced pursuant to Section 2.07), and if in any case the Company pays all other sums payable under this Indenture by the Company, then this Indenture shall, subject to Section 8.01(c), cease to be of further effect. The Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Company.

(b) Subject to Sections 8.01(c) and 8.02, the Company at any time may terminate (1) all its obligations under the Securities and this Indenture (“legal defeasance option”) or (2) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.10, 4.11 and 4.12, the operation of Sections 6.01(4), 6.01(5), 6.01(6), 6.01(7) and 6.01(8) (but, in the case of Sections 6.01(6) and (7), with respect only to Significant Subsidiaries and Subsidiary Guarantors) and the requirement of the Company to comply with Section 5.01(a)(3) (“covenant defeasance option”). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercises its legal defeasance option, payment of the Securities may not be accelerated because of an Event of Default with respect thereto. If the Company exercises its covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default specified in Sections 6.01(4), 6.01(5), 6.01(6), 6.01(7) and 6.01(8) (but, in the case of Sections 6.01(6) and (7), with respect only to Significant Subsidiaries and Subsidiary Guarantors) or because of the failure of the Company to comply with Section 5.01(a)(3). If the Company exercises its legal defeasance option or its covenant defeasance option, each Subsidiary Guarantor shall be released from all of its obligations with respect to its Subsidiary Guarantee.

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding clauses (a) and (b) above, the Company’s obligations in Sections 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 7.07 and 7.08 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the Company’s obligations in Sections 7.07, 8.04 and 8.05 shall survive.

SECTION 8.02 Conditions to Defeasance. The Company may exercise its legal defeasance option or its covenant defeasance option only if:

(1) the Company irrevocably deposits in trust with the Trustee money or U.S. Government Obligations for the payment of principal of and interest on the Securities to maturity or redemption, as the case may be;

(2) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest when due on all the Securities to maturity or redemption, as the case may be;

(3) 90 days pass after the deposit is made and during the 90-day period no Default specified in Sections 6.01(7) or (8) with respect to the Company occurs which is continuing at the end of the period;

(4) the deposit does not constitute a default under any other material agreement (other than this Indenture) binding on the Company (other than that resulting with respect to the Securities from any borrowing of funds to be applied to make the deposit required to effect such legal defeasance or covenant defeasance and any similar and simultaneous deposit relating to such Securities, and the granting of Liens in connection therewith);

(5) the Company must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of Securities over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others;

(6) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of this Indenture there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Securityholders will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(7) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Securityholders will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and

(8) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities as contemplated by this Article 8 have been complied with.

Before or after a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of Securities at a future date in accordance with Article 3.

SECTION 8.03 Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities.

SECTION 8.04 Repayment to Company. The Trustee and the Paying Agent shall promptly turn over to the Company upon written request any excess money or securities held by them at any time.

Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Securityholders entitled to the money must look to the Company for payment as general creditors.

SECTION 8.05 Indemnity for Government Obligations. The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.06 Reinstatement. If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 8; provided, however, that, if the Company has made any payment of interest on or principal of any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

## ARTICLE 9 AMENDMENTS

SECTION 9.01 Without Consent of Holders. The Company, the Subsidiary Guarantors and the Trustee may amend this Indenture or the Securities without notice to or consent of any Securityholder:

- (1) to cure any ambiguity, omission, defect or inconsistency;
- (2) to provide for the assumption by a successor Person of the obligations of the Company or any Subsidiary Guarantor under this Indenture;
- (3) to provide for uncertificated Securities in addition to or in place of certificated Securities; provided, however, that the uncertificated Securities are issued in registered form for purposes of Section 163(f) of the Code or in a manner such that the uncertificated Securities are described in Section 163(f)(2) (B) of the Code;
- (4) to add Guarantees with respect to the Securities, including any Subsidiary Guarantees, or to secure the Securities;
- (5) to add to the covenants of the Company or any Subsidiary Guarantor for the benefit of the Holders or to surrender any right or power herein conferred upon the Company or any Subsidiary Guarantor;
- (6) to make any change that would provide additional rights or benefits to the Holders or that does not adversely affect the rights of any Securityholder;
- (7) to comply with any requirement of the SEC in connection with qualifying, or maintaining the qualification of, this Indenture under the TIA;

(8) to conform the text of this Indenture, the Securities or the Subsidiary Guarantees to any provision of the section of the Offering Circular entitled "Description of the Notes" to the extent that such provision in such section of the Offering Circular was intended to be a substantially verbatim recitation of a provision of this Indenture, the Securities or the Subsidiary Guarantees, such intention to be evidenced by an Officers' Certificate of the Company delivered to the Trustee;

(9) to provide for the issuance of Additional Securities in accordance with the limitations set forth in this Indenture as of the date of this Indenture;

(10) to evidence and provide for the acceptance of the appointment of a successor Trustee; or

(11) to make any amendment to the provisions of this Indenture relating to the form, authentication, exchange, transfer and legending of Securities; provided, however, that (a) compliance with this Indenture as so amended would not result in Securities being transferred in violation of the Securities Act or any other applicable securities law and (b) such amendment does not materially affect the rights of Holders to transfer Securities;

After an amendment under this Section 9.01 becomes effective, the Company shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

**SECTION 9.02 With Consent of Holders.** The Company, the Subsidiary Guarantors and the Trustee may amend this Indenture or the Securities without notice to any Securityholder but with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities then outstanding (including consents obtained in connection with a tender offer or exchange for the Securities) and any past Default or noncompliance with any provision of this Indenture may also be waived with the consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding. However, without the consent of each Holder of an outstanding Security affected thereby, an amendment or waiver may not:

(1) reduce the amount of Securities whose Holders must consent to an amendment or waiver;

(2) reduce the rate of or extend the time for payment of interest on any Security;

(3) reduce the principal of or change the Stated Maturity of any Security;

(4) change the provisions applicable to the redemption of any Security as described in Article 3 hereof or in Sections 5 and 6 of the Securities;

(5) make any Security payable in money other than that stated in the Security;



- (6) impair the right of any Holder to receive payment of principal of and interest on such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities;
- (7) make any changes to Section 6.04 or to clauses (1) through (10) of this Section 9.02;
- (8) make any change in the ranking or priority of any Security that would adversely affect the Holders;
- (9) make any change in, or release other than in accordance with this Indenture, any Subsidiary Guarantee that would adversely affect the Securityholders; or
- (10) make any other change in this Section 9.02.

The consent of the Holders of the Securities is not necessary under this Section 9.02 to approve the particular form of any proposed amendment. It shall be sufficient if such consent approves the substance of the proposed amendment.

After an amendment under this Section becomes effective, the Company shall mail to Securityholders a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

SECTION 9.03 Compliance with Trust Indenture Act. Every amendment to this Indenture or the Securities shall comply with the TIA as then in effect.

SECTION 9.04 Revocation and Effect of Consents and Waivers. A consent to an amendment or a waiver by a Holder of a Security shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Securityholder. An amendment or waiver becomes effective upon the execution of such amendment or waiver by the Trustee.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Securityholders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

SECTION 9.05 Notation on or Exchange of Securities. If an amendment changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

SECTION 9.06 Trustee To Sign Amendments. The Trustee shall sign any amendment authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing any amendment the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

SECTION 9.07 Payment for Consent. Neither the Company nor any Affiliate of the Company shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Securities unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

## ARTICLE 10 SUBSIDIARY GUARANTEES

SECTION 10.01 Guarantees. Each Subsidiary Guarantor hereby unconditionally and irrevocably Guarantees, jointly and severally, to each Holder and to the Trustee and its successors and assigns (a) the full and punctual payment of principal of and interest on the Securities when due, whether at maturity, by acceleration, by redemption or otherwise, and all other monetary obligations of the Company under this Indenture and the Securities and (b) the full and punctual performance within applicable grace periods of all other obligations of the Company under this Indenture and the Securities (all the foregoing being hereinafter collectively called the "Guaranteed Obligations"). Each Subsidiary Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from such Subsidiary Guarantor and that such Subsidiary Guarantor will remain bound under this Article 10 notwithstanding any extension or renewal of any Guaranteed Obligation.

Each Subsidiary Guarantor waives presentation to, demand of, payment from and protest to the Company of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Subsidiary Guarantor waives notice of any default under the Securities or the Guaranteed Obligations. The obligations of each Subsidiary Guarantor hereunder shall not be affected by (1) the failure of any Holder or the Trustee to assert any claim or demand or to enforce any right or remedy against the Company or any other Person (including any Subsidiary Guarantor) under this Indenture, the Securities or any other agreement or otherwise; (2) any extension or renewal of any thereof; (3) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Securities or any other agreement; (4) the

release of any security held by any Holder or the Trustee for the Guaranteed Obligations or any of them; (5) the failure of any Holder or the Trustee to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (6) except as set forth in Section 10.06, any change in the ownership of such Subsidiary Guarantor.

Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder or the Trustee to any security held for payment of the Guaranteed Obligations.

Except as expressly set forth in Sections 8.01(b), 10.02 and 10.06, the obligations of each Subsidiary Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Subsidiary Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder or the Trustee to assert any claim or demand or to enforce any remedy under this Indenture, the Securities or any other agreement, by any waiver or modification thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Subsidiary Guarantor or would otherwise operate as a discharge of such Subsidiary Guarantor as a matter of law or equity.

Each Subsidiary Guarantor further agrees that except as expressly set forth in Sections 8.01(b), 10.02 and 10.06 its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Company or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder or the Trustee has at law or in equity against any Subsidiary Guarantor by virtue hereof, upon the failure of the Company to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Subsidiary Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders or the Trustee an amount equal to the sum of (A) the unpaid amount of such Guaranteed Obligations, (B) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by law) and (C) all other monetary Guaranteed Obligations of the Company to the Holders and the Trustee.

Each Subsidiary Guarantor further agrees that, as between it, on the one hand, and the Holders and the Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations hereby may be accelerated as provided in Article 6 for the purposes of such Subsidiary Guarantor's Subsidiary Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and

(ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Subsidiary Guarantor for the purposes of this Section.

Each Subsidiary Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Section.

SECTION 10.02 Limitation on Liability. Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Subsidiary Guarantor shall not exceed the maximum amount that can be hereby guaranteed without rendering this Indenture, as it relates to such Subsidiary Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

SECTION 10.03 Successors and Assigns. This Article 10 shall be binding upon each Subsidiary Guarantor and its successors and assigns and shall inure to the benefit of the successors and assigns of the Trustee and the Holders and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Securities shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

SECTION 10.04 No Waiver. Neither a failure nor a delay on the part of either the Trustee or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 10 at law, in equity, by statute or otherwise.

SECTION 10.05 Modification. No modification, amendment or waiver of any provision of this Article 10, nor the consent to any departure by any Subsidiary Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Subsidiary Guarantor in any case shall entitle such Subsidiary Guarantor to any other or further notice or demand in the same, similar or other circumstances.

SECTION 10.06 Release of Subsidiary Guarantor. A Subsidiary Guarantor will be released from its obligations under this Article 10 (other than any obligation that may have arisen under Section 10.07):

(1) upon the sale (including any sale pursuant to any exercise of remedies by a holder of Indebtedness of the Company or of such Subsidiary Guarantor) or other disposition (including by way of consolidation or merger) of a Subsidiary Guarantor;

- (2) upon the sale or disposition of all or substantially all the assets of such Subsidiary Guarantor;
- (3) upon the designation of such Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with the terms of this Indenture;
- (4) at such time as such Subsidiary Guarantor does not have any Obligations outstanding that required such Subsidiary Guarantor to enter into a Guarantee Agreement pursuant to Section 4.11, and the Company provides an Officers' Certificate to the Trustee certifying that no such Indebtedness is outstanding and that the Company elects to have such Subsidiary Guarantor released; or
- (5) upon defeasance of the Securities or discharge of this Indenture pursuant to Article 8;

provided, however, that in the case of clauses (1) and (2) above, (i) such sale or other disposition is made to a Person other than the Company or a Subsidiary of the Company, (ii) such sale or disposition is otherwise permitted by this Indenture and (iii) the Company provides an Officers' Certificate to the Trustee to the effect that the Company will comply with its obligations under Section 4.06. At the request of the Company, the Trustee shall execute and deliver an appropriate instrument evidencing such release.

SECTION 10.07 Contribution. Each Subsidiary Guarantor that makes a payment under its Subsidiary Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under this Indenture to a contribution from each other Subsidiary Guarantor in an amount equal to such other Subsidiary Guarantor's pro rata portion of such payment based on the respective net assets of all the Subsidiary Guarantors at the time of such payment determined in accordance with GAAP.

## ARTICLE 11 MISCELLANEOUS

SECTION 11.01 Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

SECTION 11.02 Notices. Any notice or communication shall be in writing and delivered in person or mailed by first-class mail addressed as follows:

if to the Company or any Subsidiary Guarantor:

Ducommun Incorporated  
23301 Wilmington Avenue  
Carson, California 90745-6209  
Attention: General Counsel

if to the Trustee:

Wilmington Trust FSB  
50 South Sixth Street, Suite 1290  
Minneapolis, MN 55402

Attention: Ducommun Incorporated Administrator

The Company, any Subsidiary Guarantor or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Securityholder shall be mailed by first class mail to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

SECTION 11.03 Communication by Holders with Other Holders. Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, any Subsidiary Guarantor, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

SECTION 11.04 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee:

- (1) an Officers' Certificate stating that, in the opinion of the signor or signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 11.05 Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

- (1) a statement that the individual making such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such individual, such individual has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

SECTION 11.06 When Securities Disregarded. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which the Trustee knows are so owned shall be so disregarded. Also, subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

SECTION 11.07 Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 11.08 Legal Holidays. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

SECTION 11.09 Governing Law. This Indenture and the Securities shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 11.10 No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company or any Subsidiary Guarantor shall not have any liability for any obligations of the Company under the Securities or this Indenture or of such Subsidiary Guarantor under its Subsidiary Guarantee or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

SECTION 11.11 Successors. All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 11.12 Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be deemed an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

SECTION 11.13 Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 11.14 Waiver of Jury Trial. EACH PARTY TO THIS INDENTURE WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, OR IN CONNECTION WITH, THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

DUCOMMUN INCORPORATED

By: /s/ Joseph Bellino

Name: Joseph Bellino

Title: Vice President and Chief Financial Officer

DUCOMMUN AEROSTRUCTURES, INC.

DUCOMMUN AEROSTRUCTURES MEXICO, LLC

DUCOMMUN AEROSTRUCTURES NEW YORK, INC.

COMPOSITE STRUCTURES, LLC

DUCOMMUN TECHNOLOGIES, INC.

LABARGE ELECTRONICS, INC.

LABARGE/STC, INC.

LABARGE ACQUISITION COMPANY, INC.

DUCOMMUN LABARGE TECHNOLOGIES, INC.

CMP DISPLAY SYSTEMS, INC

MILTEC CORPORATION

By: /s/ Joseph Bellino

Name: Joseph Bellino

Title: Vice President



WILMINGTON TRUST FSB, as Trustee

By /s/ Jane Schweiger

Name: Jane Schweiger

Title: Vice President

[FORM OF SUPPLEMENTAL INDENTURE TO BE  
DELIVERED BY ADDITIONAL SUBSIDIARY GUARANTORS]

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of [ ] among [ ] (the "Additional Subsidiary Guarantor"), a [ ] [corporation] and a subsidiary of Ducommun Incorporated, a Delaware corporation (or its permitted successor) (the "Company"), the other Subsidiary Guarantors (the "Existing Subsidiary Guarantors") and Wilmington Trust FSB, as Trustee under the Indenture (the "Trustee").

WITNESSETH:

WHEREAS, the Company and the Existing Subsidiary Guarantors have heretofore executed and delivered to the Trustee an Indenture (the "Indenture"), dated as of June 28, 2011, providing for the issuance of the Company's 9.750% Senior Notes due 2018 (the "Securities");

WHEREAS, [Section 4.11]/[Section 5.01(b)] of the Indenture provides that under certain circumstances the Company will cause the Additional Subsidiary Guarantor to execute and deliver to the Trustee a Guarantee Agreement pursuant to which the Additional Subsidiary Guarantor will Guarantee payment of the Securities on the same terms and conditions as those set forth in Article 10 of the Indenture; and

WHEREAS, pursuant to Section 9.01(4) of the Indenture, the Trustee, the Company and the Existing Subsidiary Guarantors are authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt of which is hereby acknowledged, the Company, the Additional Subsidiary Guarantor, the Existing Subsidiary Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Securities as follows:

SECTION 1. Capitalized Terms. Capitalized terms used herein but not defined shall have the meanings assigned to them in the Indenture.

SECTION 2. Guarantees. [a] The Additional Subsidiary Guarantor hereby agrees, jointly and severally with all other Subsidiary Guarantors, to guarantee the Company's obligations under the Securities and the Indenture on the terms and subject to the conditions set forth in Article 10 of the Indenture and to be bound by all other applicable provisions of the Indenture.

[(b) If, in connection with any payment made under or with respect to the Subsidiary Guarantee of the Additional Subsidiary Guarantor, the Additional Subsidiary Guarantor is required to withhold or deduct any amount for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities related thereto) (hereinafter "Taxes") imposed or levied by or on behalf of the

government of [ ]<sup>1</sup> or any political subdivision or any authority or agency therein or thereof having power to tax, or within any other jurisdiction in which the Additional Subsidiary Guarantor is organized or is otherwise resident for tax purposes or any jurisdiction from or through which payment is made (each a “Relevant Taxing Jurisdiction”), such Additional Subsidiary Guarantor will be required to pay such additional amounts (“Additional Amounts”) as may be necessary so that the net amount received by the Holders (including Additional Amounts) after such withholding or deduction will not be less than the amount the Holders would have received if such Taxes had not been withheld or deducted; provided, however, that no Additional Amounts will be payable with respect to a payment made to a Holder which is subject to Taxes by reason of its being connected with the Relevant Taxing Jurisdiction (other than by the mere ownership or holding of Securities outside [ ]<sup>2</sup> or the receipt of payments in respect of the Subsidiary Guarantee of the Additional Subsidiary Guarantor.

Upon request, the Additional Subsidiary Guarantor shall provide the Trustee with official receipts or other documentation satisfactory to the Trustee evidencing the payment of the Taxes with respect to which Additional Amounts are paid.<sup>3</sup>

SECTION 3. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Securities heretofore or hereafter authenticated and delivered shall be bound hereby.

SECTION 4. Governing Law. **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

SECTION 5. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture. The recitals contained herein shall be taken as the statements of the Company, and the Trustee shall have no liability or responsibility with respect thereto.

SECTION 6. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be deemed an original, but all of them together represent the same agreement.

SECTION 7. Effect of Headings. The Section headings herein are for convenience only and shall not effect the construction of this Supplemental Indenture.

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<sup>1</sup> Provide applicable jurisdiction of incorporation or organization.

<sup>2</sup> Provide applicable jurisdiction of incorporation or organization.

<sup>3</sup> Include if the Additional Subsidiary Guarantor is incorporated or organized under the laws of a jurisdiction outside the United States of America.

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture to be duly executed as of the date first written above.

DUCOMMUN INCORPORATED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SUBSIDIARY GUARANTORS]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[ADDITIONAL SUBSIDIARY GUARANTOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WILMINGTON TRUST FSB, as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PROVISIONS RELATING TO INITIAL SECURITIES,  
PRIVATE EXCHANGE SECURITIES AND EXCHANGE SECURITIES

1. Definitions

1.1 Definitions

For the purposes of this Appendix the following terms shall have the meanings indicated below:

“Definitive Security” means a certificated Initial Security or Exchange Security or Private Exchange Security bearing, if required, the appropriate restricted securities legend set forth in Section 2.3(e).

“Depository” means The Depository Trust Company, its nominees and their respective successors.

“Distribution Compliance Period”, with respect to any Securities, means the period of 40 consecutive days beginning on and including the later of (i) the day on which such Securities are first offered to Persons other than distributors (as defined in Regulation S under the Securities Act) in reliance on Regulation S and (ii) the issue date with respect to such Securities.

“Exchange Securities” means (1) the 9.750% Senior Notes due 2018 issued pursuant to the Indenture in connection with a Registered Exchange Offer pursuant to the applicable Registration Rights Agreement and (2) Additional Securities, if any, issued pursuant to the Indenture in connection with a Registered Exchange Offer pursuant to the applicable Registration Rights Agreement.

“Global Security” means either a Regulation S Global Security or a Rule 144A Global Security.

“Initial Purchasers” means (1) with respect to the Initial Securities issued on the Issue Date, Credit Suisse Securities (USA) LLC and UBS Securities LLC and (2) with respect to each issuance of Additional Securities, the Persons purchasing or underwriting such Additional Securities under the related Purchase Agreement.

“Initial Securities” means (1) \$200,000,000 aggregate principal amount of 9.750% Senior Notes due 2018 issued on the Issue Date and (2) Additional Securities, if any, issued in a transaction exempt from the registration requirements of the Securities Act.

“Private Exchange” means the offer by the Company, pursuant to a Registration Rights Agreement, to the Initial Purchasers to issue and deliver to each such Initial Purchaser, in exchange for the Initial Securities held by such Initial Purchaser as part of the initial distribution of such Initial Securities, a like aggregate principal amount of Private Exchange Securities.

“Private Exchange Securities” means any 9.750% Senior Notes due 2018 issued in connection with a Private Exchange.

“Purchase Agreement” means (1) with respect to the Initial Securities issued on the Issue Date, the Purchase Agreement dated June 23, 2011, among the Company, the Subsidiary Guarantors and the Initial Purchasers and (2) with respect to each issuance of Additional Securities, the purchase agreement or underwriting agreement among the Company and the Persons purchasing or underwriting such Additional Securities.

“QIB” means a “qualified institutional buyer” as defined in Rule 144A.

“Registered Exchange Offer” means the offer by the Company, pursuant to a Registration Rights Agreement, to certain Holders of Initial Securities, to issue and deliver to such Holders, in exchange for the Initial Securities, a like aggregate principal amount of Exchange Securities registered under the Securities Act.

“Registration Rights Agreement” means (1) with respect to the Initial Securities issued on the Issue Date, the Registration Rights Agreement dated June 28, 2011 among the Company, the Subsidiary Guarantors and the Initial Purchasers and (2) with respect to each issuance of Additional Securities issued in a transaction exempt from the registration requirements of the Securities Act, the registration rights agreement, if any, among the Company and the Persons purchasing such Additional Securities under the related Purchase Agreement.

“Rule 144A Securities” means all Securities offered and sold to QIBs in reliance on Rule 144A.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Custodian” means the custodian with respect to a Global Security (as appointed by the Depository), or any successor Person thereto, and shall initially be the Trustee.

“Shelf Registration Statement” means the registration statement issued by the Company in connection with the offer and sale of Initial Securities or Private Exchange Securities pursuant to a Registration Rights Agreement.

“Transfer Restricted Securities” means Securities that bear or are required to bear a legend relating to restrictions on transfer relating to the Securities Act set forth in Section 2.3(e).

## 1.2 Other Definitions

<u>Term</u>	<u>Defined in Section</u>
Agent Members	2.1(b)
Clearstream	2.1(a)
Euroclear	2.1(a)
Regulation S	2.1(a)
Regulation S Global Security	2.1(a)
Rule 144A	2.1(a)
Rule 144A Global Security	2.1(a)

## 2. The Securities

2.1 (a) **Form and Dating.** The Initial Securities will be offered and sold by the Company pursuant to a Purchase Agreement. The Initial Securities will be resold initially only to (i) QIBs in reliance on Rule 144A under the Securities Act (“Rule 144A”) and (ii) Persons other than U.S. Persons (as defined in Regulation S) in reliance on Regulation S under the Securities Act (“Regulation S”). Initial Securities may thereafter be transferred to, among others, QIBs and purchasers in reliance on Regulation S, subject to the restrictions on transfer set forth herein. Initial Securities initially resold pursuant to Rule 144A shall be issued initially in the form of one or more permanent global Securities in fully registered form (collectively, the “Rule 144A Global Security”), and Initial Securities initially resold pursuant to Regulation S shall be issued initially in the form of one or more global securities in fully registered form (collectively, the “Regulation S Global Security”), in each case without interest coupons and with the global securities legend and the applicable restricted securities legend set forth in Exhibit A hereto, which shall be deposited on behalf of the purchasers of the Initial Securities represented thereby with the Securities Custodian and registered in the name of the Depository or a nominee of the Depository, duly executed by the Company and authenticated by the Trustee as provided in this Indenture. Through the Distribution Compliance Period, beneficial interests in the Regulation S Global Security may be held only through the Euroclear System (“Euroclear”) and Clearstream Banking, S.A. (“Clearstream”) (as indirect participants in DTC), unless transferred to a person that takes delivery through a Rule 144A Global Security in accordance with the certification requirements described below.

Prior to and after the expiration of the Distribution Compliance Period, beneficial interests in the Regulation S Global Securities may be exchanged for beneficial interests in the Rule 144A Global Securities only if:

(1) such exchange occurs in connection with a transfer of the Initial Securities pursuant to Rule 144A; and

(2) the transferor first delivers to the Trustee a written certificate (in the form set forth on the reverse of the Security) to the effect that the Initial Securities are being transferred to a Person:

(a) who the transferor reasonably believes to be a qualified institutional buyer within the meaning of Rule 144A;

(b) purchasing for its own account or the account of a qualified institutional buyer in a transaction meeting the requirements of Rule 144A; and

(c) in accordance with all applicable securities laws of the states of the United States and other jurisdictions.

Beneficial interests in a Rule 144A Global Note may be transferred to a Person who takes delivery in the form of an interest in the Regulation S Global Note, whether before or after the expiration of the Distribution Compliance Period, only if the transferor first delivers to the Trustee a written certificate (in the form set forth on the reverse of the Security) to the effect that

such transfer is being made in accordance with Rule 903 or 904 of Regulation S or Rule 144 (if available) and that, if such transfer occurs prior to the expiration of the Distribution Compliance Period, the interest transferred will be held immediately thereafter through Euroclear or Clearstream.

The aggregate principal amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee as hereinafter provided.

(b) Book-Entry Provisions. This Section 2.1(b) shall apply only to a Global Security deposited with or on behalf of the Depository.

The Company shall execute and the Trustee shall, in accordance with this Section 2.1(b), authenticate and deliver initially one or more Global Securities that (a) shall be registered in the name of the Depository for such Global Security or Global Securities or the nominee of such Depository and (b) shall be delivered by the Trustee to such Depository or pursuant to such Depository's instructions or held by the Trustee as custodian for the Depository.

Members of, or participants in, the Depository ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository or by the Trustee as the custodian of the Depository or under such Global Security, and the Company, the Trustee and any agent of the Company or the Trustee shall be entitled to treat the Depository as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices of such Depository governing the exercise of the rights of a holder of a beneficial interest in any Global Security.

(c) Definitive Securities. Except as provided in this Section 2.1 or Section 2.3 or 2.4, owners of beneficial interests in Global Securities shall not be entitled to receive physical delivery of Definitive Securities.

## 2.2 Authentication

The Trustee shall authenticate and deliver: (1) on the Issue Date, an aggregate principal amount of \$200,000,000 9.750% Senior Notes due 2018, (2) any Additional Securities for an original issue in an aggregate principal amount specified in the written order of the Company pursuant to Section 2.02 of this Indenture and (3) Exchange Securities or Private Exchange Securities for issue only in a Registered Exchange Offer or a Private Exchange, respectively, pursuant to a Registration Rights Agreement, for a like principal amount of Initial Securities, in each case upon a written order of the Company signed by an Officer of the Company. Such order shall specify the amount of the Securities to be authenticated and the date on which the original issue of Securities is to be authenticated and, in the case of any issuance of Additional Securities pursuant to Section 2.13 of this Indenture, shall certify that such issuance is in compliance with Section 4.03 of this Indenture.



### 2.3 Transfer and Exchange

(a) Transfer and Exchange of Definitive Securities. When Definitive Securities are presented to the Registrar with a request:

(x) to register the transfer of such Definitive Securities; or

(y) to exchange such Definitive Securities for an equal principal amount of Definitive Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Definitive Securities surrendered for transfer or exchange:

(i) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or its attorney duly authorized in writing; and

(ii) if such Definitive Securities are required to bear a restricted securities legend, they are being transferred or exchanged pursuant to an effective registration statement under the Securities Act, pursuant to Section 2.3(b) or pursuant to clause (A), (B) or (C) below, and are accompanied by the following additional information and documents, as applicable:

(A) if such Definitive Securities are being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect; or

(B) if such Definitive Securities are being transferred to the Company, a certification to that effect; or

(C) if such Definitive Securities are being transferred (x) pursuant to an exemption from registration in accordance with Rule 144A, Regulation S or Rule 144 under the Securities Act; or (y) in reliance upon another exemption from the requirements of the Securities Act: (i) a certification to that effect (in the form set forth on the reverse of the Security) and (ii) if the Company so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in Section 2.3(e)(i).

(b) Restrictions on Transfer of a Definitive Security for a Beneficial Interest in a Global Security. A Definitive Security may not be exchanged for a beneficial interest in a Rule 144A Global Security or a Regulation S Global Security except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a Definitive Security, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with:

(i) certification, in the form set forth on the reverse of the Security, that such Definitive Security is either (A) being transferred in accordance with Rule 144A or (B) is being transferred in accordance with Rule 903 or Rule 904 under Regulation S; and

(ii) written instructions directing the Trustee to make, or to direct the Securities Custodian to make, an adjustment on its books and records with respect to such Rule 144A Global Security (in the case of a transfer pursuant to clause (b)(i)(A)) or Regulation S Global Security (in the case of a transfer pursuant to clause (b)(i)(B)) to reflect an increase in the aggregate principal amount of the Securities represented by the Rule 144A Global Security or Regulation S Global Security, as applicable, such instructions to contain information regarding the Depository account to be credited with such increase, then the Trustee shall cancel such Definitive Security and cause, or direct the Securities Custodian to cause, in accordance with the standing instructions and procedures existing between the Depository and the Securities Custodian, the aggregate principal amount of Securities represented by the Rule 144A Global Security or Regulation S Global Security, as applicable, to be increased by the aggregate principal amount of the Definitive Security to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Rule 144A Global Security or Regulation S Global Security, as applicable, equal to the principal amount of the Definitive Security so canceled. If no Rule 144A Global Securities or Regulation S Global Securities, as applicable, are then outstanding, the Company shall issue and the Trustee shall authenticate, upon a written order of the Company signed by an Officer of the Company, a new Rule 144A Global Security or Regulation S Global Security, as applicable, in the appropriate principal amount.

(c) Transfer and Exchange of Global Securities.

(i) The transfer and exchange of Global Securities or beneficial interests therein shall be effected through the Depository, in accordance with this Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depository therefor. A transferor of a beneficial interest in a Global Security shall deliver to the Registrar a written order given in accordance with the Depository's procedures containing information regarding the participant account of the Depository to be credited with a beneficial interest in the Global Security. The Registrar shall, in accordance with such instructions, instruct the Depository to credit to the account of the Person specified in such instructions a beneficial interest in the Global Security and to debit the account of the Person making the transfer the beneficial interest in the Global Security being transferred.

(ii) If the proposed transfer is a transfer of a beneficial interest in one Global Security to a beneficial interest in another Global Security, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Security to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the Global Security from which such interest is being transferred.

(iii) Notwithstanding any other provisions of this Appendix (other than the provisions set forth in Section 2.4), a Global Security may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

(iv) In the event that a Global Security is exchanged for Definitive Securities pursuant to Section 2.4 of this Appendix, prior to the consummation of a Registered Exchange Offer or the effectiveness of a Shelf Registration Statement with respect to such Securities, such Securities may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this Section 2.3 (including the certification requirements set forth on the reverse of the Securities intended to ensure that such transfers comply with Rule 144A, Regulation S or another applicable exemption under the Securities Act, as the case may be) and such other procedures as may from time to time be adopted by the Company.

(d) Legend.

(i) Except as permitted by the following paragraphs (ii), (iii) and (iv), each Security certificate evidencing the Global Securities (and all Securities issued in exchange therefor or in substitution thereof), in the case of Securities offered otherwise than in reliance on Regulation S, shall bear a legend in substantially the following form:

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR (V) TO AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(A)(1), (2), (3), (4) OR (7) OF REGULATION D UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

Each certificate evidencing a Security offered in reliance on Regulation S shall, in lieu of the foregoing, bear a legend in substantially the following form:

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT.

Each Definitive Security shall also bear the following additional legend:

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR SUCH CERTIFICATES AND OTHER INFORMATION AS MAY BE REQUIRED BY THE INDENTURE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

(ii) Upon any sale or transfer of a Transfer Restricted Security (including any Transfer Restricted Security represented by a Global Security) pursuant to Rule 144 under the Securities Act, the Registrar shall permit the transferee thereof to exchange such Transfer Restricted Security for a certificated Security that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Security, if the transferor thereof certifies in writing to the Registrar that such sale or transfer was made in reliance on Rule 144 (such certification to be in the form set forth on the reverse of the Security).

(iii) After a transfer of any Initial Securities or Private Exchange Securities pursuant to and during the period of the effectiveness of a Shelf Registration Statement with respect to such Initial Securities or Private Exchange Securities, as the case may be, all requirements pertaining to legends on such Initial Security or such Private Exchange Security will cease to apply, the requirements requiring any such Initial Security or such Private Exchange Security issued to certain Holders be issued in global form will cease to apply, and a certificated Initial Security or Private Exchange Security or an Initial Security or Private Exchange Security in global form, in each case without restrictive transfer legends, will be available to the transferee of the Holder of such Initial Securities or Private Exchange Securities upon exchange of such transferring Holder's certificated Initial Security or Private Exchange Security or directions to transfer such Holder's interest in the Global Security, as applicable.

(iv) Upon the consummation of a Registered Exchange Offer with respect to the Initial Securities, all requirements pertaining to such Initial Securities that Initial Securities issued to certain Holders be issued in global form will still apply with respect to Holders of such Initial Securities that do not exchange their Initial Securities, and Exchange Securities in certificated or global form, in each case without the restricted securities legend set forth in Exhibit A hereto will be available to Holders that exchange such Initial Securities in such Registered Exchange Offer.

(v) Upon the consummation of a Private Exchange with respect to the Initial Securities, all requirements pertaining to such Initial Securities that Initial Securities issued to certain Holders be issued in global form will still apply with respect to Holders of such Initial Securities that do not exchange their Initial Securities, and Private Exchange Securities in global form with the global securities legend and the applicable restricted securities legend set forth in Exhibit A hereto will be available to Holders that exchange such Initial Securities in such Private Exchange.

(e) Cancellation or Adjustment of Global Security. At such time as all beneficial interests in a Global Security have either been exchanged for Definitive Securities, redeemed, purchased or canceled, such Global Security shall be returned to the Depository for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for certificated Securities, redeemed, purchased or canceled, the principal amount of Securities represented by such Global Security shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Securities Custodian for such Global Security) with respect to such Global Security, by the Trustee or the Securities Custodian, to reflect such reduction.

(f) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depository or other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

#### 2.4 Definitive Securities

(a) A Global Security deposited with the Depository or with the Trustee as Securities Custodian for the Depository pursuant to Section 2.1 shall be transferred to the beneficial owners thereof in the form of Definitive Securities in an aggregate principal amount equal to the principal amount of such Global Security, in exchange for such Global Security, only if such transfer complies with Section 2.3 hereof and (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for such Global Security or if at any time such Depository ceases to be a “clearing agency” registered under the Exchange Act and, in either case, a successor Depository is not appointed by the Company within 90 days of such notice, or (ii) an Event of Default has occurred and is continuing and the Depository requests the Company to issue Definitive Securities or (iii) the Company, in its sole discretion, notifies the Trustee in writing that it elects to cause the issuance of Definitive Securities under this Indenture.

(b) Any Global Security that is transferable to the beneficial owners thereof pursuant to this Section 2.4 shall be surrendered by the Depository to the Trustee located at its corporate trust office, to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations. Any portion of a Global Security transferred pursuant to this Section 2.4 shall be executed, authenticated and delivered only in minimum denominations of \$ 2,000 principal amount and any integral multiples of \$1,000 in excess thereof and registered in such names as the Depository shall direct. Any Definitive Security delivered in exchange for an interest in the Transfer Restricted Security shall, except as otherwise provided by Section 2.3(e) hereof, bear the applicable restricted securities legend and definitive note legend set forth in Exhibit A hereto.

(c) Subject to the provisions of Section 2.4(b) hereof, the registered Holder of a Global Security shall be entitled to grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(d) In the event of the occurrence of one of the events specified in Section 2.4(a) hereof, the Company shall promptly make available to the Trustee a reasonable supply of Definitive Securities in definitive, fully registered form without interest coupons.

[FORM OF FACE OF INITIAL SECURITY]

[Global Securities Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

[[FOR REGULATION S GLOBAL SECURITY ONLY] UNTIL 40 DAYS AFTER THE LATER OF COMMENCEMENT OR COMPLETION OF THE OFFERING, AN OFFER OR SALE OF SECURITIES WITHIN THE UNITED STATES BY A DEALER (AS DEFINED IN THE SECURITIES ACT) MAY VIOLATE THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IF SUCH OFFER OR SALE IS MADE OTHERWISE THAN IN ACCORDANCE WITH RULE 144A THEREUNDER.]

[Restricted Securities Legend for Securities Offered Otherwise than in Reliance on Regulation S]

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION

MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR (V) TO AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(A)(1), (2), (3), (4) OR (7) OF REGULATION D UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (V) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

[Restricted Securities Legend for Securities Offered in Reliance on Regulation S.]

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT.

[Definitive Securities Legend]

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR SUCH CERTIFICATES AND OTHER INFORMATION AS MAY BE REQUIRED BY THE INDENTURE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.



9.750% Senior Notes due 2018

Ducommun Incorporated, a Delaware corporation, promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ on July 15, 2018.

Interest Payment Dates: July 15 and January 15.

Record Dates: July 1 and January 1.

Additional provisions of this Security are set forth on the other side of this Security.

By: \_\_\_\_\_  
Name:  
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON TRUST FSB

as Trustee, certifies that this is one of the Securities referred to in the Indenture.

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_

9.750% Senior Note due 2018

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest

Ducommun Incorporated, a Delaware corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the “Company”), promises to pay interest on the principal amount of this Security at the rate per annum shown above; provided, however, that if a Registration Default (as defined in the Registration Rights Agreement) occurs, additional interest will accrue on this Security at a rate of 0.50% per annum (increasing by an additional 0.25% per annum after each consecutive 90-day period that occurs after the date on which such Registration Default occurs up to a maximum additional interest rate of 1.00%) from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured. Not less than 15 days (or such other shorter period of time acceptable to the Trustee) prior to each interest payment date, the Company shall deliver notice to the Trustee of any Registration Default, the rate of any additional interest and the amount of any additional interest payable on such interest payment date. The Company will pay interest semiannually on July 15 and January 15 of each year, commencing January 15, 2012. Interest on the Securities will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from June 28, 2011. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company will pay interest on overdue principal at the rate borne by this Security plus 1.00% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

2. Method of Payment

The Company will pay interest on the Securities (except defaulted interest) to the Persons who are registered Holders of Securities at the close of business on the July 1 or January 1 immediately preceding the interest payment date even if Securities are canceled after the record date and on or before the interest payment date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of the Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by the Depository. The Company will make all payments in respect of a Definitive Security (including principal, premium and interest) by mailing a check to the registered address of each Holder thereof; provided, however, that payments on a Definitive Security will be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

3. Paying Agent and Registrar

Initially, Wilmington Trust FSB (the "Trustee"), will act as Paying Agent and Registrar. The Company may appoint and change any Paying Agent, Registrar or co-registrar without notice. The Company or any of its domestically incorporated Wholly Owned Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Company issued the Securities under an Indenture dated as of June 28, 2011 ("Indenture"), among the Company, the Subsidiary Guarantors and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended (the "Act"), as in effect on the date of the Indenture. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms. To the extent any provision of the Securities conflict with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

The Securities are general unsecured obligations of the Company. The Company shall be entitled, subject to its compliance with Section 4.03 of the Indenture, to issue Additional Securities pursuant to Section 2.13 of the Indenture. The Initial Securities issued on the Issue Date, any Additional Securities and all Exchange Securities or Private Exchange Securities issued in exchange therefor will be treated as a single class for all purposes under the Indenture. The Indenture contains covenants that limit the ability of the Company and its Subsidiaries to incur additional indebtedness; pay dividends or distributions on, or redeem or repurchase capital stock; make investments; issue or sell capital stock of Subsidiaries; engage in transactions with affiliates; transfer or sell assets; guarantee indebtedness; restrict dividends or other payments of Subsidiaries; and consolidate, merge or transfer all or substantially all of its assets and the assets of its Subsidiaries. These covenants are subject to important exceptions and qualifications.

5. Optional Redemption

Except as set forth below, the Company shall not be entitled to redeem the Securities prior to July 15, 2015.

On and after July 15, 2015, the Company shall be entitled at its option on one or more occasions to redeem all or a portion of the Securities, upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed in percentages of principal amount on the redemption date), plus accrued interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on July 15 of the years set forth below:

<u>Period</u>	<u>Redemption Price</u>
2015	104.875%
2016	102.438%
2017 and thereafter	100.000%

Prior to July 15, 2014, the Company shall be entitled at its option on any one or more occasions to redeem Securities (which includes Additional Securities, if any) in an aggregate principal amount not to exceed 35% of the aggregate principal amount of the Securities (which includes Additional Securities, if any) issued, upon not less than 30 nor more than 60 days' notice, at a redemption price of 109.750% of the principal amount of the Securities redeemed, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of Holders of the Securities on the relevant record date to receive interest on the relevant interest payment date), with the Net Cash Proceeds from one or more Equity Offerings; provided, however, that (1) at least 65% of such aggregate principal amount of Securities (which includes Additional Securities, if any) remains outstanding immediately after the occurrence of each such redemption (other than Securities held, directly or indirectly, by the Company or its Affiliates); and (2) each such redemption occurs within 120 days after the date of the related Equity Offering.

The Company shall be entitled to redeem all or a part of the Securities at its option at any time or from time to time prior to July 15, 2015, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to the sum of (1) 100% of the then outstanding principal amount thereof, plus (2) accrued and unpaid interest, if any, to the date of redemption (subject to the right of Holders on the relevant record date to receive interest due on the relevant interest payment date), plus (3) the Applicable Premium.

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Securities or portions thereof called for redemption on the applicable redemption date.

Notwithstanding the foregoing, the Company may at any time and from time to time purchase Securities in the open market or otherwise.

#### 6. Notice of Redemption

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at its registered address. The Company will redeem Securities with principal amounts of \$2,000 or less in whole and not in part. Securities in denominations larger than \$2,000 principal amount may be redeemed in part but only in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. If money sufficient to pay the redemption price of and accrued interest on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date interest ceases to accrue on such Securities (or such portions thereof) called for redemption.

#### 7. Put Provisions

Upon a Change of Control, any Holder of Securities will have the right to cause the Company to repurchase all or any part of the Securities of such Holder at a repurchase price equal to 101% of the principal amount of the Securities to be repurchased plus accrued interest to the date of repurchase (subject to the right of Holders of record on the relevant record date to receive interest due on the related interest payment date) as provided in, and subject to the terms of, the Indenture.

8. Guarantee

The payment by the Company of the principal of, and premium and interest on, the Securities is fully and unconditionally guaranteed on a joint and several senior unsecured basis by each of the Subsidiary Guarantors to the extent set forth in the Indenture.

9. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of \$2,000 principal amount and whole multiples of \$1,000 in excess thereof. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities for a period of 15 days before a selection of Securities to be redeemed or 15 days before an interest payment date.

10. Persons Deemed Owners

The registered Holder of this Security may be treated as the owner of it for all purposes.

11. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee or Paying Agent for payment.

12. Discharge and Defeasance

Subject to certain conditions, the Company at any time shall be entitled to terminate some or all of its obligations under the Securities and the Indenture if the Company deposits with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

13. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture (a) the Indenture and the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount outstanding of the Securities and (b) any default or noncompliance with any provision may be waived with the written consent of the Holders of a majority in aggregate principal amount outstanding of the Securities. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Company, the Subsidiary Guarantors and the Trustee shall be entitled to amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities, including Subsidiary Guarantees, or to secure the Securities, or to

add to the covenants of, or surrender rights and powers conferred on, the Company or the Subsidiary Guarantors, or to comply with any requirement of the SEC in connection with qualifying the Indenture under the Act, or to make any change that would provide additional rights or benefits to the Holders or that does not adversely affect the rights of any Securityholder, or to provide for the issuance of Additional Securities in accordance with the limitations set forth in the Indenture, or to evidence and provide for the acceptance of the appointment of a successor trustee, or to make amendments to provisions of the Indenture relating to the form, authentication, transfer and legending of the Securities, or to conform the text of the Indenture, the Securities of the Subsidiary Guarantees to any provision in the section of the Offering Circular entitled "Description of the Notes" to the extent that such provision in such section was intended to be a verbatim recitation of a provision of the Indenture, the Securities or the Subsidiary Guarantees.

#### 14. Defaults and Remedies

Under the Indenture, Events of Default include (a) a default in the payment of interest, if any, on the Securities when due, continued for 30 days; (b) a default in the payment of principal of, or premium, if any, on, any Security when due at its Stated Maturity, upon optional redemption, upon required purchase, upon declaration of acceleration or otherwise; (c) the failure by the Company to comply with its obligations under Section 5.01 of the Indenture; (d) the failure by the Company or any Subsidiary Guarantor to comply for 60 days (or 90 days in the case of Section 4.02 of the Indenture) after notice with its other agreements contained in the Indenture; (e) Indebtedness of the Company, any Subsidiary Guarantor or any Significant Subsidiary is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds \$25.0 million; (f) certain events of bankruptcy, insolvency or reorganization of the Company, a Subsidiary Guarantor or any Significant Subsidiary; (g) any judgment or decree for the payment of money in excess of \$25.0 million (net of any amounts insured by a solvent third party that has not disclaimed coverage) is entered against the Company, a Subsidiary Guarantor or any Significant Subsidiary, remains outstanding for a period of 60 consecutive days following such judgment and is not discharged, waived or stayed; and (h) any Subsidiary Guarantee ceases to be in full force and effect (other than in accordance with the terms of such Subsidiary Guarantee and the Indenture) or any Subsidiary Guarantor denies or disaffirms its obligations under its Subsidiary Guarantee. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Securities may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in aggregate principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of principal or interest) if it determines that withholding notice is not opposed to the interest of the Holders.

15. Trustee Dealings with the Company.

Subject to certain limitations imposed by the Act, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

16. No Recourse Against Others

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

17. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Security.

18. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

19. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

20. Holders' Compliance with Registration Rights Agreement.

Each Holder of a Security, by acceptance hereof, acknowledges and agrees to the provisions of the Registration Rights Agreement, including the obligations of the Holders with respect to a registration and the indemnification of the Company to the extent provided therein.

21. Governing Law.

**THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**



The Company will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture which has in it the text of this Security in larger type. Requests may be made to:

Ducommun Incorporated  
23301 Wilmington Avenue  
Carson, California 90745-6209  
Attention: General Counsel

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_ Your Signature: \_\_\_\_\_

Sign exactly as your name appears on the other side of this Security.

In connection with any transfer of any of the Securities evidenced by this certificate occurring prior to the expiration of the period referred to in Rule 144(k) under the Securities Act after the later of the date of original issuance of such Securities and the last date, if any, on which such Securities were owned by the Company or any Affiliate of the Company, the undersigned confirms that such Securities are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

- (1) q to the Company; or
- (2) q pursuant to an effective registration statement under the Securities Act of 1933; or
- (3) q pursuant to and in accordance with Rule 144A under the Securities Act of 1933 to a Person that the transferor reasonably believes to be a "qualified institutional buyer" within the meaning of Rule 144A, who is purchasing for its own account or the account of a qualified institutional buyer in a transaction meeting the requirement of Rule 144A and in accordance with all applicable securities laws of the states of the United States and other jurisdictions; or
- (4) q outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 903 or Rule 904 under Regulation S of the Securities Act of 1933; provided that if such transfer pursuant to Rule 903 or Rule 904 occurs prior to the expiration of the Distribution Compliance Period, the transferred interest will be held immediately thereafter through Euroclear or Clearstream; or
- (5) q pursuant to the exemption from registration provided by Rule 144 under the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered holder thereof; provided, however, that if box (5) is checked, the Trustee shall be entitled to require, prior to registering any such transfer of the Securities, such legal opinions, certifications and other information as the Company has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act.

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Signature

Signature Guarantee:

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Signature must be guaranteed

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Signature

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notice: To be executed by an executive officer

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

As of the Issue Date, the aggregate principal amount of this Global Security is \$[            ]. The following increases or decreases in this Global Security have been made:

Date of Exchange	Amount of decrease in Principal amount of this Global Security	Amount of increase in Principal amount of this Global Security	Principal amount of this Global Security following such decrease or increase	Signature of authorized officer of Trustee or Securities Custodian
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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Company pursuant to Section 4.06 or 4.10 of the Indenture, check the box:

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 4.06 or 4.10 of the Indenture, state the amount in principal amount: \$ \_\_\_\_\_

Dated: \_\_\_\_\_

Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Security.)

Signature Guarantee: \_\_\_\_\_  
(Signature must be guaranteed)

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

FORM OF FACE OF EXCHANGE SECURITY  
OR PRIVATE EXCHANGE SECURITY<sup>\*/\*\*/</sup>

- \*/ If the Security is to be issued in global form add the Global Securities Legend from Exhibit A to the Appendix and the attachment from such Exhibit A captioned “[TO BE ATTACHED TO GLOBAL SECURITIES] - SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY”.
- \*\*/ If The Security Is a Private Exchange Security issued in a Private Exchange to an Initial Purchaser holding an unsold portion of its initial allotment, add the Restricted Securities Legend from Exhibit A to the Appendix and replace the Assignment Form included in this Exhibit B with the Assignment Form included in such Exhibit A.

9.750% Senior Notes due 2018

Ducommun Incorporated, a Delaware corporation, promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ on July 15, 2018.

Interest Payment Dates: July 15 and January 15.

Record Dates: July 1 and January 1.

Additional provisions of this Security are set forth on the other side of this Security.



By: \_\_\_\_\_  
Name:  
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON TRUST FSB

as Trustee, certifies that this is one of the Securities referred to in the Indenture.

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_

[FORM OF REVERSE SIDE OF EXCHANGE SECURITY OR PRIVATE EXCHANGE SECURITY]

9.750% Senior Note due 2018

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest

Ducommun Incorporated, a Delaware corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the “Company”), promises to pay interest on the principal amount of this Security at the rate per annum shown above; provided, however, that if a Registration Default (as defined in the Registration Rights Agreement) occurs, additional interest will accrue on this Security at a rate of 0.50% per annum (increasing by an additional 0.25% per annum after each consecutive 90-day period that occurs after the date on which such Registration Default occurs up to a maximum additional interest rate of 1.00%) from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured. Not less than 15 days (or such other shorter period of time acceptable to the Trustee) prior to each interest payment date, the Company shall deliver notice to the Trustee of any Registration Default, the rate of any additional interest and the amount of any additional interest payable on such interest payment date.]<sup>4</sup> The Company will pay interest semiannually on July 15 and January 15 of each year, commencing January 15, 2012. Interest on the Securities will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from June 28, 2011. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company will pay interest on overdue principal at the rate borne by this Security plus 1.00% per annum, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

2. Method of Payment

The Company will pay interest on the Securities (except defaulted interest) to the Persons who are registered Holders of Securities at the close of business on the July 1 or January 1 immediately preceding the interest payment date even if Securities are canceled after the record date and on or before the interest payment date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of the Securities represented by a Global Security (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by the Depository. The Company will make all payments in respect of a Definitive Security (including principal, premium and interest) by mailing a check to the registered address of each Holder thereof; provided, however, that payments on a Definitive Security will be made by wire transfer to a U.S. dollar account maintained by the payee with a

<sup>4</sup> Insert if, at the date of issuance of the Exchange Security or Private Exchange Security (as the case may be), any Registration Default has occurred with respect to the related Initial Securities during the interest period in which such date of issuance occurs.

bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

3. Paying Agent and Registrar

Initially, Wilmington Trust FSB (the "Trustee"), will act as Paying Agent and Registrar. The Company may appoint and change any Paying Agent, Registrar or co-registrar without notice. The Company or any of its domestically incorporated Wholly Owned Subsidiaries may act as Paying Agent, Registrar or co-registrar.

4. Indenture

The Company issued the Securities under an Indenture dated as of June 28, 2011 ("Indenture"), among the Company, the Subsidiary Guarantors and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended (the "Act"), as amended, as in effect on the date of the Indenture. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Securityholders are referred to the Indenture and the Act for a statement of those terms. To the extent any provision of the Securities conflict with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

The Securities are general unsecured obligations of the Company. The Company shall be entitled, subject to its compliance with Section 4.03 of the Indenture, to issue Additional Securities pursuant to Section 2.13 of the Indenture. The Initial Securities issued on the Issue Date, any Additional Securities and all Exchange Securities or Private Exchange Securities issued in exchange therefor will be treated as a single class for all purposes under the Indenture. The Indenture contains covenants that limit the ability of the Company and its Subsidiaries to incur additional indebtedness; pay dividends or distributions on, or redeem or repurchase capital stock; make investments; issue or sell capital stock of Subsidiaries; engage in transactions with affiliates; transfer or sell assets; guarantee indebtedness; restrict dividends or other payments of Subsidiaries; and consolidate, merge or transfer all or substantially all of its assets and the assets of its Subsidiaries. These covenants are subject to important exceptions and qualifications.

5. Optional Redemption

Except as set forth below, the Company shall not be entitled to redeem the Securities prior to July 15, 2015.

On and after July 15, 2015, the Company shall be entitled at its option on one or more occasions to redeem all or a portion of the Securities, upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed in percentages of principal amount on the redemption date), plus accrued interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the 12-month period commencing on July 15 of the years set forth below:

<u>Period</u>	<u>Redemption Price</u>
2015	104.875%
2016	102.438%
2017 and thereafter	100.000%

Prior to July 15, 2014, the Company shall be entitled at its option on any one or more occasions to redeem Securities (which includes Additional Securities, if any) in an aggregate principal amount not to exceed 35% of the aggregate principal amount of the Securities (which includes Additional Securities, if any) issued, upon not less than 30 nor more than 60 days' notice, at a redemption price of 109.750% of the principal amount of the Securities redeemed, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of Holders of the Securities on the relevant record date to receive interest on the relevant interest payment date), with the Net Cash Proceeds from one or more Equity Offerings; provided, however, that (1) at least 65% of such aggregate principal amount of Securities (which includes Additional Securities, if any) remains outstanding immediately after the occurrence of each such redemption (other than Securities held, directly or indirectly, by the Company or its Affiliates); and (2) each such redemption occurs within 120 days after the date of the related Equity Offering.

The Company shall be entitled to redeem all or a part of the Securities at its option at any time or from time to time prior to July 15, 2015, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to the sum of (1) 100% of the then outstanding principal amount thereof, plus (2) accrued and unpaid interest, if any, to the date of redemption (subject to the right of Holders on the relevant record date to receive interest due on the relevant interest payment date), plus (3) the Applicable Premium.

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Securities or portions thereof called for redemption on the applicable redemption date.

Notwithstanding the foregoing, the Company may at any time and from time to time purchase Securities in the open market or otherwise.

#### 6. Notice of Redemption

Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at its registered address. The Company will redeem Securities with principal amounts of \$2,000 or less in whole and not in part. Securities in denominations larger than \$2,000 principal amount may be redeemed in part but only in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. If money sufficient to pay the redemption price of and accrued interest on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with the Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date interest ceases to accrue on such Securities (or such portions thereof) called for redemption.

7. Put Provisions

Upon a Change of Control, any Holder of Securities will have the right to cause the Company to repurchase all or any part of the Securities of such Holder at a repurchase price equal to 101% of the principal amount of the Securities to be repurchased plus accrued interest to the date of repurchase (subject to the right of Holders of record on the relevant record date to receive interest due on the related interest payment date) as provided in, and subject to the terms of, the Indenture.

8. Guarantee

The payment by the Company of the principal of, and premium and interest on, the Securities is fully and unconditionally guaranteed on a joint and several senior unsecured basis by each of the Subsidiary Guarantors to the extent set forth in the Indenture.

9. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of \$2,000 principal amount and whole multiples of \$1,000 in excess thereof. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or any Securities for a period of 15 days before a selection of Securities to be redeemed or 15 days before an interest payment date.

10. Persons Deemed Owners

The registered Holder of this Security may be treated as the owner of it for all purposes.

11. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee or Paying Agent for payment.

12. Discharge and Defeasance

Subject to certain conditions, the Company at any time shall be entitled to terminate some or all of its obligations under the Securities and the Indenture if the Company deposits with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

13. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture (a) the Indenture and the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount outstanding of the Securities and (b) any default or noncompliance with any provision may be waived with the written consent of the Holders of a majority in aggregate principal amount outstanding of the Securities. Subject to certain exceptions set forth in the

Indenture, without the consent of any Securityholder, the Company, the Subsidiary Guarantors and the Trustee shall be entitled to amend the Indenture or the Securities to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 of the Indenture, or to provide for uncertificated Securities in addition to or in place of certificated Securities, or to add guarantees with respect to the Securities, including Subsidiary Guarantees, or to secure the Securities, or to add to the covenants of, or surrender rights and powers conferred on, the Company or the Subsidiary Guarantors, or to comply with any requirement of the SEC in connection with qualifying the Indenture under the Act, or to make any change that would provide additional rights or benefits to the Holders or that does not adversely affect the rights of any Securityholder, or to provide for the issuance of Additional Securities in accordance with the limitations set forth in the Indenture, or to evidence and provide for the acceptance of the appointment of a successor trustee, or to make amendments to provisions of the Indenture relating to the form, authentication, transfer and legending of the Securities, or to conform the text of the Indenture, the Securities of the Subsidiary Guarantees to any provision in the section of the Offering Circular entitled "Description of the Notes" to the extent that such provision in such section was intended to be a verbatim recitation of a provision of the Indenture, the Securities or the Subsidiary Guarantees.

#### 14. Defaults and Remedies

Under the Indenture, Events of Default include (a) a default in the payment of interest, if any, on the Securities when due, continued for 30 days; (b) a default in the payment of principal of, or premium, if any, on, any Security when due at its Stated Maturity, upon optional redemption, upon required purchase, upon declaration of acceleration or otherwise; (c) the failure by the Company to comply with its obligations under Section 5.01 of the Indenture; (d) the failure by the Company or any Subsidiary Guarantor to comply for 60 days (or 90 days in the case of Section 4.02 of the Indenture) after notice with its other agreements contained in the Indenture; (e) Indebtedness of the Company, any Subsidiary Guarantor or any Significant Subsidiary is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds \$25.0 million; (f) certain events of bankruptcy, insolvency or reorganization of the Company, a Subsidiary Guarantor or any Significant Subsidiary; (g) any judgment or decree for the payment of money in excess of \$25.0 million (net of any amounts insured by a solvent third party that has not disclaimed coverage) is entered against the Company, a Subsidiary Guarantor or any Significant Subsidiary, remains outstanding for a period of 60 consecutive days following such judgment and is not discharged, waived or stayed; and (h) any Subsidiary Guarantee ceases to be in full force and effect (other than in accordance with the terms of such Subsidiary Guarantee and the Indenture) or any Subsidiary Guarantor denies or disaffirms its obligations under its Subsidiary Guarantee. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Securities may declare all the Securities to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Securities being due and payable immediately upon the occurrence of such Events of Default.

Securityholders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives indemnity or security satisfactory to it. Subject to certain limitations, Holders of a majority in

aggregate principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of principal or interest) if it determines that withholding notice is not opposed to the interest of the Holders.

15. Trustee Dealings with the Company.

Subject to certain limitations imposed by the Act, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

16. No Recourse Against Others

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

17. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Security.

18. Abbreviations

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

19. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures the Company has caused CUSIP numbers to be printed on the Securities and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

[20. Holders' Compliance with Registration Rights Agreement.

Each Holder of a Security, by acceptance hereof, acknowledges and agrees to the provisions of the Registration Rights Agreement, including the obligations of the Holders with respect to a registration and the indemnification of the Company to the extent provided therein.]<sup>5</sup>

21. Governing Law.

**THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

The Company will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture which has in it the text of this Security in larger type. Requests may be made to:

Ducommun Incorporated  
23301 Wilmington Avenue  
Carson, California 90745-6209  
Attention: General Counsel

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<sup>5</sup> Delete if this Security is not being issued in exchange for an Initial Security.



ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

Your Signature: \_\_\_\_\_

Sign exactly as your name appears on the other side of this Security.

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Company pursuant to Section 4.06 or 4.10 of the Indenture, check the box:

If you want to elect to have only part of this Security purchased by the Company pursuant to Section 4.06 or 4.10 of the Indenture, state the amount in principal amount: \$ \_\_\_\_\_

Dated: \_\_\_\_\_

Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Security.)

Signature Guarantee: \_\_\_\_\_  
(Signature must be guaranteed)

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

\$200,000,000

## DUCOMMUN INCORPORATED

9.750% Senior Notes due 2018

REGISTRATION RIGHTS AGREEMENT

June 28, 2011

CREDIT SUISSE SECURITIES (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010-3629

and

UBS SECURITIES LLC  
299 Park Avenue  
New York, New York 10171

Dear Sirs:

Ducommun Incorporated, a Delaware corporation (the "Issuer"), proposes to issue and sell to Credit Suisse Securities (USA) LLC and UBS Securities LLC (collectively, the "Initial Purchasers"), upon the terms set forth in a purchase agreement of even date herewith (the "Purchase Agreement"), U.S.\$200,000,000 aggregate principal amount of its 9.750% Senior Notes due 2018 (the "Initial Securities") to be unconditionally guaranteed (the "Guaranties") by those guarantors listed in Schedule A hereto, (the "Guarantors" and together with the Issuer, the "Company"). The Initial Securities will be issued pursuant to an Indenture, dated as of June 28, 2011, (the "Indenture") among the Company and Wilmington Trust FSB (the "Trustee"). As an inducement to the Initial Purchasers, the Company agrees with the Initial Purchasers, for the benefit of the holders of the Initial Securities (including, without limitation, the Initial Purchasers), the Exchange Securities (as defined below) and the Private Exchange Securities (as defined below) (collectively the "Holders"), as follows:

1. *Registered Exchange Offer.* The Company shall, at its own cost, prepare and, not later than 120 days after (or if the 120th day is not a business day, the first business day thereafter) the date of original issue of the Initial Securities (the "Issue Date"), file with the Securities and Exchange Commission (the "Commission") a registration statement (the "Exchange Offer Registration Statement") on an appropriate form under the Securities Act of 1933, as amended (the "Securities Act"), with respect to a proposed offer (the "Registered Exchange Offer") to the Holders of Transfer Restricted Securities (as defined in Section 6 hereof), who are not prohibited by any law or policy of the Commission from participating in the Registered Exchange Offer, to issue and deliver to such Holders, in exchange for the Initial Securities, a like aggregate principal amount of debt securities (the "Exchange Securities") of the Company issued under the Indenture and identical in all material respects to the Initial Securities (except for the transfer restrictions relating to the Initial Securities and the provisions relating to the matters described in Section 6 hereof) that would be registered under the Securities Act. The Company shall use its commercially reasonable efforts to cause such Exchange Offer Registration Statement to become effective under the Securities Act within 270 days (or if the 270th day is not a business day, the first business day thereafter) after the Issue Date of the Initial Securities and shall keep the Exchange Offer Registration Statement effective for not less than 30 days (or longer, if required by applicable law) after the date notice of the Registered Exchange Offer is mailed to the Holders (such period being called the "Exchange Offer Registration Period").

If the Company effects the Registered Exchange Offer, the Company will be entitled to close the Registered Exchange Offer 30 days after the commencement thereof provided that the Company has accepted all the Initial Securities theretofore validly tendered in accordance with the terms of the Registered Exchange Offer.

As soon as reasonably practicable following the declaration of the effectiveness of the Exchange Offer Registration Statement, the Company shall promptly commence the Registered Exchange Offer, it being the objective of such Registered Exchange Offer to enable each Holder of Transfer Restricted Securities (as defined in Section 6 hereof) electing to exchange the Initial Securities for Exchange Securities (assuming that such Holder is not an affiliate of the Company within the meaning of the Securities Act, acquires the Exchange Securities in the ordinary course of such Holder's business and has no arrangements with any person to participate in the distribution of the Exchange Securities and is not prohibited by any law or policy of the Commission from participating in the Registered Exchange Offer) to trade such Exchange Securities from and after their receipt without any limitations or restrictions under the Securities Act and without material restrictions under the securities laws of the several states of the United States.

The Company acknowledges that, pursuant to current interpretations by the Commission's staff of Section 5 of the Securities Act, in the absence of an applicable exemption therefrom, (i) each Holder which is a broker-dealer electing to exchange Securities, acquired for its own account as a result of market making activities or other trading activities, for Exchange Securities (an "Exchanging Dealer"), is required to deliver a prospectus containing the information set forth in (a) Annex A hereto on the cover, (b) Annex B hereto in the "Exchange Offer Procedures" section and the "Purpose of the Exchange Offer" section, and (c) Annex C hereto in the "Plan of Distribution" section of such prospectus in connection with a sale of any such Exchange Securities received by such Exchanging Dealer pursuant to the Registered Exchange Offer and (ii) an Initial Purchaser that elects to sell Exchange Securities acquired in exchange for Securities constituting any portion of an unsold allotment is required to deliver a prospectus containing the information required by Items 507 or 508 of Regulation S-K under the Securities Act, as applicable, in connection with such sale.

The Company shall use its commercially reasonable efforts to keep the Exchange Offer Registration Statement effective and to amend and supplement the prospectus contained therein, in order to permit such prospectus to be lawfully delivered by all persons subject to the prospectus delivery requirements of the Securities Act for such period of time as such persons must comply with such requirements in order to resell the Exchange Securities; provided, however, that (i) in the case where such prospectus and any amendment or supplement thereto must be delivered by an Exchanging Dealer or an Initial Purchaser, such period shall be the lesser of 180 days and the date on which all Exchanging Dealers and the Initial Purchasers have sold all Exchange Securities held by them (unless such period is extended pursuant to Section 3(j) below) and (ii) upon request, the Company shall make such prospectus and any amendment or supplement thereto, available to any broker-dealer for use in connection with any resale of any Exchange Securities for a period of not less than 90 days after the consummation of the Registered Exchange Offer.

If, upon consummation of the Registered Exchange Offer, any Initial Purchaser holds Initial Securities acquired by it as part of its initial distribution, the Company, simultaneously with the delivery of the Exchange Securities pursuant to the Registered Exchange Offer, shall issue and deliver to such Initial Purchaser upon the written request of such Initial Purchaser, in exchange (the "Private Exchange") for the Initial Securities held by such Initial Purchaser, a like principal amount of debt securities of the Company issued under the Indenture and identical in all material respects (including the existence of restrictions on transfer under the Securities Act and the securities laws of the several states of the United States, but excluding provisions relating to the matters described in Section 6 hereof) to the Initial Securities (the "Private Exchange Securities"). The Initial Securities, the Exchange Securities and the Private Exchange Securities are herein collectively called the "Securities".

In connection with the Registered Exchange Offer, the Company shall:

- (a) mail to each Holder a copy of the prospectus forming part of the Exchange Offer Registration Statement, together with an appropriate letter of transmittal and related documents;
- (b) keep the Registered Exchange Offer open for not less than 30 days (or longer, if required by applicable law) after the date notice thereof is mailed to the Holders;
- (c) utilize the services of a depository for the Registered Exchange Offer, which may be the Trustee or an affiliate of the Trustee;
- (d) permit Holders to withdraw tendered Securities at any time prior to the close of business, New York time, on the last business day on which the Registered Exchange Offer shall remain open; and
- (e) otherwise comply with all applicable laws.

As soon as practicable after the close of the Registered Exchange Offer or the Private Exchange, as the case may be, the Company shall:

- (x) accept for exchange all the Securities validly tendered and not withdrawn pursuant to the Registered Exchange Offer and the Private Exchange;
- (y) deliver to the Trustee for cancellation all the Initial Securities so accepted for exchange; and
- (z) cause the Trustee to authenticate and deliver promptly to each Holder of the Initial Securities, Exchange Securities or Private Exchange Securities, as the case may be, equal in principal amount to the Initial Securities of such Holder so accepted for exchange.

The Indenture will provide that the Exchange Securities will not be subject to the transfer restrictions set forth in the Indenture and that all the Securities will vote and consent together on all matters as one class and that none of the Securities will have the right to vote or consent as a class separate from one another on any matter.

Interest on each Exchange Security and Private Exchange Security issued pursuant to the Registered Exchange Offer and in the Private Exchange will accrue from the last interest payment date on which interest was paid on the Initial Securities surrendered in exchange therefor or, if no interest has been paid on the Initial Securities, from the date of original issue of the Initial Securities.

Each Holder participating in the Registered Exchange Offer shall be required to represent to the Company that at the time of the consummation of the Registered Exchange Offer (i) any Exchange Securities received by such Holder will be acquired in the ordinary course of business, (ii) such Holder will have no arrangements or understanding with any person to participate in the distribution of the Securities or the Exchange Securities within the meaning of the Securities Act, (iii) such Holder is not an "affiliate," as defined in Rule 405 of the Securities Act, of the Company or if it is an affiliate, such Holder will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable, (iv) if such Holder is not a broker-dealer, that it is not engaged in, and does not intend to engage in, the distribution of the Exchange Securities and (v) if such Holder is a broker-dealer, that it will receive Exchange Securities for its own account in exchange for Initial Securities that were acquired as a result of market-making activities or other trading activities and that it will be required to acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Securities.

Notwithstanding any other provisions hereof, the Company will ensure that (i) any Exchange Offer Registration Statement and any amendment thereto and any prospectus forming part thereof and any supplement thereto complies in all material respects with the Securities Act and the rules and regulations thereunder, (ii) any Exchange Offer Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) any prospectus forming part of any Exchange Offer Registration Statement, and any supplement to such prospectus, does not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

2. *Shelf Registration.* If, (i) because of any change in law or in applicable interpretations thereof by the staff of the Commission, the Company is not permitted to effect a Registered Exchange Offer, as contemplated by Section 1 hereof, (ii) the Registered Exchange Offer is not consummated within 300 days of the Issue Date, (iii) any Initial Purchaser so requests with respect to the Initial Securities (or the Private Exchange Securities) not eligible to be exchanged for Exchange Securities in the Registered Exchange Offer and held by it following consummation of the Registered Exchange Offer or (iv) any Holder (other than an Exchanging Dealer) is not eligible to participate in the Registered Exchange Offer or, in the case of any Holder (other than an Exchanging Dealer) that participates in the Registered Exchange Offer, such Holder does not receive freely tradeable Exchange Securities on the date of the exchange, then, upon written request, the Company shall take the following actions:

(a) The Company shall, at its cost, as promptly as practicable (but in no event more than 30 days after so required or requested pursuant to this Section 2) file with the Commission a registration statement (the “Shelf Registration Statement” and, together with the Exchange Offer Registration Statement, a “Registration Statement”) on an appropriate form under the Securities Act relating to the offer and sale of the Transfer Restricted Securities (as defined in Section 6 hereof) by the Holders thereof from time to time in accordance with the methods of distribution set forth in the Shelf Registration Statement and Rule 415 under the Securities Act (hereinafter, the “Shelf Registration”) and thereafter shall use commercially reasonable efforts to cause such Shelf Registration Statement to be declared effective (i) in the case of clause (2)(i) above on or prior to the later of (A) the 300th day after the Issue Date or (B) the 90th day after the date on which the Shelf Registration Statement is required to be filed and (ii) in the case of clause (2)(ii),(iii) or (iv) above, on or prior to the 90th day after the date on which the Shelf Registration Statement is required to be filed, (unless it becomes effective automatically upon filing); provided, however, that no Holder (other than an Initial Purchaser) shall be entitled to have the Securities held by it covered by such Shelf Registration Statement unless such Holder agrees in writing to be bound by all the provisions of this Agreement applicable to such Holder.

(b) The Company shall use its commercially reasonable efforts to keep the Shelf Registration Statement continuously effective in order to permit the prospectus included therein to be lawfully delivered by the Holders of the relevant Securities, for a period of two years (or for such longer period if extended pursuant to Section 3(j) below) from the Issue Date or such shorter period that will terminate when all the Securities covered by the Shelf Registration Statement (i) have been sold pursuant thereto or (ii) have been distributed to the public pursuant to Rule 144 under the Securities Act. The Company shall be deemed not to have used its commercially reasonable efforts to keep the Shelf Registration Statement effective during the requisite period if it voluntarily takes any action that would result in Holders of Securities covered thereby not being able to offer and sell such Securities during that period, unless such action is required by applicable law.

(c) Notwithstanding any other provisions of this Agreement to the contrary, the Company shall cause the Shelf Registration Statement and the related prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement, amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act and the rules and regulations of the Commission and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

3. *Registration Procedures.* In connection with any Shelf Registration contemplated by Section 2 hereof and, to the extent applicable, any Registered Exchange Offer contemplated by Section 1 hereof, the following provisions shall apply:

(a) The Company shall (i) furnish to each Initial Purchaser, prior to the filing thereof with the Commission, a copy of the Registration Statement and each amendment thereof and each supplement, if any, to the prospectus included therein and, in the event that an Initial Purchaser (with respect to any portion of an unsold allotment from the original offering) is participating in the Registered Exchange Offer or the Shelf Registration Statement, the Company shall use its commercially reasonable efforts to reflect in each such document, when so filed with the Commission, such comments as such Initial Purchaser reasonably and promptly may propose; (ii) include the information set forth in Annex A hereto on the cover, in Annex B hereto in the "Exchange Offer Procedures" section and the "Purpose of the Exchange Offer" section and in Annex C hereto in the "Plan of Distribution" section of the prospectus forming a part of the Exchange Offer Registration Statement and include the information set forth in Annex D hereto in the Letter of Transmittal delivered pursuant to the Registered Exchange Offer; (iii) if requested by an Initial Purchaser, include the information required by Items 507 or 508 of Regulation S-K under the Securities Act, as applicable, in the prospectus forming a part of the Exchange Offer Registration Statement; (iv) include within the prospectus contained in the Exchange Offer Registration Statement a section entitled "Plan of Distribution," reasonably acceptable to the Initial Purchasers, which shall contain a summary statement of the positions taken or policies made by the staff of the Commission with respect to the potential "underwriter" status of any broker-dealer that is the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of Exchange Securities received by such broker-dealer in the Registered Exchange Offer (a "Participating Broker-Dealer"), whether such positions or policies have been publicly disseminated by the staff of the Commission or such positions or policies, in the reasonable judgment of the Initial Purchasers based upon advice of counsel (which may be in-house counsel), represent the prevailing views of the staff of the Commission; and (v) in the case of a Shelf Registration Statement, include in the prospectus included in the Shelf Registration Statement (or, if permitted by Commission Rule 430B(b), in a prospectus supplement that becomes a part thereof pursuant to Commission Rule 430B(f)) that is delivered to any Holder pursuant to Section 3(d) and (f), the names of the Holders, who propose to sell Securities pursuant to the Shelf Registration Statement, as selling securityholders.

(b) The Company shall give written notice to the Initial Purchasers, the Holders of the Securities and any Participating Broker-Dealer from whom the Company has received prior written notice that it will be a Participating Broker-Dealer in the Registered Exchange Offer (which notice pursuant to clauses (ii)-(vi) hereof shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made):

(i) when the Registration Statement or any amendment thereto has been filed with the Commission and when the Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission for amendments or supplements to the Registration Statement or the prospectus included therein or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose;

(iv) of the issuance by the Commission of a notification of objection to the use of the form on which the Registration Statement has been filed, and of the happening of any event that causes the Company to become an “ineligible issuer,” as defined in Commission Rule 405;

(v) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(vi) except to the extent otherwise incorporated therein by reference, of the occurrence of any event that requires the Company to make changes in the Registration Statement or the prospectus in order that the Registration Statement or the prospectus do not contain an untrue statement of a material fact nor omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in light of the circumstances under which they were made) not misleading.

(c) The Company shall use commercially reasonable efforts to obtain the withdrawal at the earliest possible time, of any order suspending the effectiveness of the Registration Statement.

(d) Upon request, the Company shall furnish to each Holder of Securities included within the coverage of the Shelf Registration, without charge, at least one copy of the Shelf Registration Statement and any post-effective amendment or supplement thereto, including financial statements and schedules, and, if the Holder so requests in writing, all exhibits thereto (including those, if any, incorporated by reference). The Company shall not, without the prior consent of the Initial Purchasers, which consent shall not be unreasonably withheld, make any offer relating to the Securities that would constitute a “free writing prospectus,” as defined in Commission Rule 405.

(e) Upon request, the Company shall deliver to each Exchanging Dealer and each Initial Purchaser, and to any other Holder who so requests, without charge, at least one copy of the Exchange Offer Registration Statement and any post-effective amendment thereto, including financial statements and schedules, and, if any Initial Purchaser or any such Holder requests, all exhibits thereto (including those incorporated by reference).

(f) The Company shall, during the Shelf Registration Period, deliver to each Holder of Securities included within the coverage of the Shelf Registration, without charge, as many copies of the prospectus (including each preliminary prospectus) included in the Shelf Registration Statement and any amendment or supplement thereto as such person may reasonably request. The Company consents, subject to the provisions of this Agreement, to the use of the prospectus or any amendment or supplement thereto by each of the selling Holders of the Securities in connection with the offering and sale of the Securities covered by the prospectus, or any amendment or supplement thereto, included in the Shelf Registration Statement.

(g) The Company shall deliver to each Initial Purchaser, any Exchanging Dealer, any Participating Broker-Dealer and such other persons required to deliver a prospectus following the Registered Exchange Offer, without charge, as many copies of the final prospectus included in the Exchange Offer Registration Statement and any amendment or supplement thereto as such persons



may reasonably request. The Company consents, subject to the provisions of this Agreement, to the use of the prospectus or any amendment or supplement thereto by any Initial Purchaser, if necessary, any Participating Broker-Dealer and such other persons required to deliver a prospectus following the Registered Exchange Offer in connection with the offering and sale of the Exchange Securities covered by the prospectus, or any amendment or supplement thereto, included in such Exchange Offer Registration Statement.

(h) Prior to any public offering of the Securities, pursuant to any Registration Statement, the Company shall use commercially reasonable efforts to register or qualify or cooperate with the Holders of the Securities included therein and their respective counsel in connection with the registration or qualification of the Securities for offer and sale under the securities or "blue sky" laws of such states of the United States as any Holder of the Securities reasonably requests in writing and do any and all other acts or things reasonably necessary or advisable to enable the offer and sale in such jurisdictions of the Securities covered by such Registration Statement; provided, however, that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it is not then so qualified or (ii) take any action which would subject it to general service of process or to taxation in any jurisdiction where it is not then so subject.

(i) The Company shall cooperate with the Holders of the Securities to facilitate the timely preparation and delivery of certificates representing the Securities to be sold pursuant to any Registration Statement free of any restrictive legends and in such denominations and registered in such names as the Holders may request a reasonable period of time prior to sales of the Securities pursuant to such Registration Statement.

(j) Upon the occurrence of any event contemplated by paragraphs (ii) through (vi) of Section 3(b) above during the period for which the Company is required to maintain an effective Registration Statement, the Company shall promptly prepare and file a post-effective amendment to the Registration Statement or a supplement to the related prospectus and any other required document so that, as thereafter delivered to Holders of the Securities or purchasers of Securities, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Initial Purchasers, the Holders of the Securities and any known Participating Broker-Dealer in accordance with paragraphs (ii) through (vi) of Section 3(b) above to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Initial Purchasers, the Holders of the Securities and any such Participating Broker-Dealers shall suspend use of such prospectus, and the period of effectiveness of the Shelf Registration Statement provided for in Section 2(b) above and the Exchange Offer Registration Statement provided for in Section 1 above shall each be extended by the number of days from and including the date of the giving of such notice to and including the date when the Initial Purchasers, the Holders of the Securities and any known Participating Broker-Dealer shall have received such amended or supplemented prospectus pursuant to this Section 3(j).

(k) Not later than the effective date of the applicable Registration Statement, the Company will provide a CUSIP number for the Initial Securities, the Exchange Securities or the Private Exchange Securities, as the case may be, and provide the applicable trustee with printed certificates for the Initial Securities, the Exchange Securities or the Private Exchange Securities, as the case may be, in a form eligible for deposit with The Depository Trust Company.

(l) The Company will comply with all rules and regulations of the Commission to the extent and so long as they are applicable to the Registered Exchange Offer or the Shelf Registration and will make generally available to its security holders (or otherwise provide in accordance with Section 11(a) of the Securities Act) an earnings statement satisfying the

provisions of Section 11(a) of the Securities Act, no later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Registration Statement, which statement shall cover such 12-month period.

(m) The Company shall cause the Indenture to be qualified under the Trust Indenture Act of 1939, as amended, in a timely manner and containing such changes, if any, as shall be necessary for such qualification. In the event that such qualification would require the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

(n) The Company may require each Holder of Securities to be sold pursuant to the Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of the Securities as the Company may from time to time reasonably require for inclusion in the Shelf Registration Statement, and the Company may exclude from such registration the Securities of any Holder that unreasonably fails to furnish such information within a reasonable time after receiving such request.

(o) The Company shall enter into such customary agreements (including, if requested, an underwriting agreement in customary form) and take all such other action, if any, as any Holder of the Securities shall reasonably request in order to facilitate the disposition of the Securities pursuant to any Shelf Registration.

(p) In the case of any Shelf Registration and subject to customary confidentiality restrictions, the Company shall (i) make reasonably available for inspection by the Holders of the Securities, any underwriter participating in any disposition pursuant to the Shelf Registration Statement and any attorney, accountant or other agent retained by the Holders of the Securities or any such underwriter all relevant financial and other records, pertinent corporate documents and properties of the Company and (ii) cause the Company's officers, directors, employees, accountants and auditors to supply all relevant information reasonably requested by the Holders of the Securities or any such underwriter, attorney, accountant or agent in connection with the Shelf Registration Statement, in each case, as shall be reasonably necessary to enable such persons, to conduct a reasonable investigation within the meaning of Section 11 of the Securities Act; provided, however, that the foregoing inspection and information gathering shall be coordinated on behalf of the Initial Purchasers by you and on behalf of the other parties, by one counsel designated by and on behalf of such other parties as described in Section 4 hereof.

(q) In the case of any Shelf Registration, the Company, if requested by any Holder of Securities covered thereby, shall cause (i) its counsel to deliver an opinion and updates thereof relating to the Securities in customary form addressed to such Holders and the managing underwriters, if any, thereof and dated, in the case of the initial opinion, the effective date of such Shelf Registration Statement; (ii) its officers to execute and deliver all customary documents and certificates and updates thereof requested by any underwriters of the applicable Securities and (iii) its independent public accountants and the independent public accountants with respect to any other entity for which financial information is provided in the Shelf Registration Statement to provide to the selling Holders of the applicable Securities and any underwriter therefor a comfort letter in customary form and covering matters of the type customarily covered in comfort letters in connection with primary underwritten offerings, subject to receipt of appropriate documentation as contemplated, and only if permitted, by Statement of Auditing Standards No. 72.

(r) If a Registered Exchange Offer or a Private Exchange is to be consummated, upon delivery of the Initial Securities by Holders to the Company (or to such other Person as directed by the Company) in exchange for the Exchange Securities or the Private Exchange Securities, as the

case may be, the Company shall mark, or caused to be marked, on the Initial Securities so exchanged that such Initial Securities are being canceled in exchange for the Exchange Securities or the Private Exchange Securities, as the case may be; in no event shall the Initial Securities be marked as paid or otherwise satisfied.

(t) In the event that any broker-dealer registered under the Exchange Act shall underwrite any Securities or participate as a member of an underwriting syndicate or selling group or “assist in the distribution” (within the meaning of the Conduct Rules (the “Rules”) of the Financial Industry Regulatory Authority, Inc. (“FINRA”)) thereof, whether as a Holder of such Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company will assist such broker-dealer in complying with the requirements of such Rules, including, without limitation, by (i) if such Rules, including Rule 2720, shall so require, engaging a “qualified independent underwriter” (as defined in Rule 2720) to participate in the preparation of the Registration Statement relating to such Securities, to exercise usual standards of due diligence in respect thereto and, if any portion of the offering contemplated by such Registration Statement is an underwritten offering or is made through a placement or sales agent, to recommend the yield of such Securities, (ii) indemnifying any such qualified independent underwriter to the extent of the indemnification of underwriters provided in Section 5 hereof and (iii) providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the Rules.

(u) The Company shall use its commercially reasonable efforts to take all other steps necessary to effect the registration of the Securities covered by a Registration Statement contemplated hereby.

4. *Registration Expenses.* The Company shall bear all fees and expenses of the Company, the Holders and the Initial Purchasers incurred in connection with the performance of its obligations under Sections 1 through 3 hereof (including the reasonable fees and expenses, if any, of Latham & Watkins LLP, counsel for the Initial Purchasers, incurred in connection with the Registered Exchange Offer), whether or not the Registered Exchange Offer or a Shelf Registration is filed or becomes effective, and, in the event of a Shelf Registration, shall bear or reimburse the Holders of the Securities covered thereby for the reasonable fees and disbursements of one firm of counsel designated by the Holders of a majority in principal amount of the Initial Securities covered thereby to act as counsel for the Holders of the Initial Securities in connection therewith.

5. *Indemnification.* (a) The Company agrees to indemnify and hold harmless each Holder of the Securities, any Participating Broker-Dealer and each person, if any, who controls such Holder or such Participating Broker-Dealer within the meaning of the Securities Act or the Exchange Act (each Holder, any Participating Broker-Dealer and such controlling persons are referred to collectively as the “Indemnified Parties”) from and against any losses, claims, damages or liabilities, joint or several, or any actions in respect thereof (including, but not limited to, any losses, claims, damages, liabilities or actions relating to purchases and sales of the Securities) to which each Indemnified Party may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in a Registration Statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus or “issuer free writing prospectus,” as defined in Commission Rule 433 (“Issuer FWP”), relating to a Shelf Registration, or arise out of, or are based upon, the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse, as incurred, the Indemnified Parties for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action in respect thereof; provided, however, that (i) the Company shall not be liable in any such case to the extent that such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in a Registration Statement or

prospectus or in any amendment or supplement thereto or in any preliminary prospectus or Issuer FWP relating to a Shelf Registration in reliance upon and in conformity with written information pertaining to such Holder and furnished to the Company by or on behalf of such Holder specifically for inclusion therein and (ii) with respect to any untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus relating to a Shelf Registration Statement, the indemnity agreement contained in this subsection (a) shall not inure to the benefit of any Holder or Participating Broker-Dealer from whom the person asserting any such losses, claims, damages or liabilities purchased the Securities concerned, to the extent that a prospectus relating to such Securities was required to be delivered (including through satisfaction of the conditions of Commission Rule 172) by such Holder or Participating Broker-Dealer under the Securities Act in connection with such purchase and any such loss, claim, damage or liability of such Holder or Participating Broker-Dealer results from the fact that there was not conveyed to such person, at or prior to the time of the sale of such Securities to such person, an amended or supplemented prospectus or, if permitted by Section 3(d), an Issuer FWP correcting such untrue statement or omission or alleged untrue statement or omission if the Company had previously furnished copies thereof to such Holder or Participating Broker-Dealer; provided further, however, that this indemnity agreement will be in addition to any liability which the Company may otherwise have to such Indemnified Party. The Company shall also indemnify underwriters, their officers and directors and each person who controls such underwriters within the meaning of the Securities Act or the Exchange Act to the same extent as provided above with respect to the indemnification of the Holders of the Securities if requested by such Holders.

(b) Each Holder of the Securities, severally and not jointly, will indemnify and hold harmless the Company and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act from and against any losses, claims, damages or liabilities or any actions in respect thereof, to which the Company or any such controlling person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in a Registration Statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus or Issuer FWP relating to a Shelf Registration, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary to make the statements therein not misleading, but in each case only to the extent that the untrue statement or omission or alleged untrue statement or omission was made in reliance upon and in conformity with written information pertaining to such Holder and furnished to the Company by or on behalf of such Holder specifically for inclusion therein; and, subject to the limitation set forth immediately preceding this clause, shall reimburse, as incurred, the Company for any legal or other expenses reasonably incurred by the Company or any such controlling person in connection with investigating or defending any loss, claim, damage, liability or action in respect thereof. This indemnity agreement will be in addition to any liability which such Holder may otherwise have to the Company or any of its controlling persons.

(c) Promptly after receipt by an indemnified party under this Section 5 of notice of the commencement of any action or proceeding (including a governmental investigation), such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section 5 for any legal or other

expenses, other than reasonable costs of investigation, subsequently incurred by such indemnified party in connection with the defense thereof. No indemnifying party shall, without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action, and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 5 is unavailable or insufficient to hold harmless an indemnified party under subsections (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party on the other from the exchange of the Securities, pursuant to the Registered Exchange Offer, or (ii) if the allocation provided by the foregoing clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or such Holder or such other indemnified party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding any other provision of this Section 5(d), the Holders of the Securities shall not be required to contribute any amount in excess of the amount by which the net proceeds received by such Holders from the sale of the Securities pursuant to a Registration Statement exceeds the amount of damages which such Holders have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this paragraph (d), each person, if any, who controls such indemnified party within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such indemnified party and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Company.

(e) The agreements contained in this Section 5 shall survive the sale of the Securities pursuant to a Registration Statement and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party.

6. *Additional Interest Under Certain Circumstances.* (a) Additional interest (the "Additional Interest") with respect to the Initial Securities shall be assessed as follows if any of the following events occur (each such event in clauses (i) through (vi) below a "Registration Default"):

(i) if the Exchange Offer Registration Statement has not been filed with the Commission on or prior to the 120th day after the Issue Date;

(ii) if the Exchange Offer Registration Statement is not declared effective by the SEC on or prior to the 270<sup>th</sup> day after the Issue Date or, if obligated to file a Shelf Registration Statement pursuant to Section 2(a)(i) hereof, a Shelf Registration Statement is not declared effective by the SEC on or prior to the 270th day after the Issue Date;

(iii) if the Registered Exchange Offer is not consummated on or prior to the 40th day after the Exchange Offer Registration Statement is declared effective,

(iv) if obligated to file the Shelf Registration Statement pursuant to clause 2(a) above, the Company fails to file the Shelf Registration Statement with the SEC on or prior to the 30th day (the "Shelf Filing Date") after the date on which the obligation to file a Shelf Registration Statement arises;

(v) if obligated to file a Shelf Registration Statement pursuant to Section 2(a)(ii) hereof, the Shelf Registration Statement is not declared effective on or prior to the 90th day after the Shelf Filing Date; or

(vi) if after either the Exchange Offer Registration Statement or the Shelf Registration Statement is declared (or becomes automatically) effective (A) such Registration Statement thereafter ceases to be effective; or (B) such Registration Statement or the related prospectus ceases to be usable (except as permitted in paragraph (b)) in connection with resales of Transfer Restricted Securities during the periods specified herein because either (1) any event occurs as a result of which the related prospectus forming part of such Registration Statement would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading or (2) it shall be necessary to amend such Registration Statement or supplement the related prospectus, to comply with the Securities Act or the Exchange Act or the respective rules thereunder.

Additional Interest shall accrue on the Initial Securities over and above the interest set forth in the title of the Securities from and including the date on which any such Registration Default shall occur (except in the case of clause (vi) above, in which case such accrual shall begin from and include the 61<sup>st</sup> consecutive day following such failure to remain effective or usable) to but excluding the date on which all such Registration Defaults have been cured, at a rate of 0.50% per annum for the first 90 days (or the 61<sup>st</sup> day, in the case of clause (vi)) immediately following the occurrence of a Registration Default, and such rate will increase by an additional 0.25% per annum with respect to each subsequent 90-day period until all Registration Defaults have been cured, up to a maximum Additional Interest of 1.00% per annum; provided, that Additional Interest will not accrue under more than one Registration Default at any time. The remedies set forth in this Section 6(a) shall constitute liquidated damages and shall be the sole and exclusive remedy of the Holders for each and any Registration Default pursuant to this Registration Rights Agreement. No Holder of a Transfer Restricted Security who has not furnished information to the Company in accordance with Section 3(n) hereof shall be entitled to Additional Interest with respect to a Registration Default in connection with a Shelf Registration and no Holder who was eligible to exchange such Holder's outstanding Securities at the time the Exchange Offer was pending and consummated and failed to validly tender such Securities for exchange pursuant to the Exchange Offer shall be entitled to receive any Additional Interest that would otherwise accrue subsequent to the date the Exchange Offer is consummated.

(b) A Registration Default referred to in Section 6(a)(vi) hereof shall be deemed not to have occurred and be continuing in relation to a Shelf Registration Statement or the related prospectus if (i) such Registration Default has occurred solely as a result of (x) the filing of a post-effective amendment to such Shelf Registration Statement to incorporate annual audited financial information with respect to the Company where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related prospectus or (y) other material events, with respect to the Company that would need to be described in such Shelf Registration Statement or the related prospectus and (ii) in the

case of clause (y), the Company is proceeding promptly and in good faith to amend or supplement such Shelf Registration Statement and related prospectus to describe such events; provided, however, that in any case if such Registration Default occurs for a continuous period in excess of 60 days, Additional Interest shall be payable in accordance with the above paragraph from the day such Registration Default occurs until such Registration Default is cured.

(c) Any amounts of Additional Interest due pursuant to clause (i) through (vi) of Section 6(a) above will be payable in cash on the regular interest payment dates with respect to the Initial Securities. The amount of Additional Interest will be determined by multiplying the applicable Additional Interest rate by the principal amount of the Initial Securities, multiplied by a fraction, the numerator of which is the number of days such Additional Interest rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months), and the denominator of which is 360.

(d) Any amounts of Additional Interest due pursuant to clause (i), (ii) or (iii) of Section 6(a) above will be payable in accordance with the Indenture.

(e) "Transfer Restricted Securities" means each Security until (i) the date on which such Transfer Restricted Security has been exchanged by a person other than a broker-dealer for a freely transferable Exchange Security in the Registered Exchange Offer, (ii) following the exchange by a broker-dealer in the Registered Exchange Offer of a Initial Security for an Exchange Note, the date on which such Exchange Note is sold to a purchaser who receives from such broker-dealer on or prior to the date of such sale a copy of the prospectus contained in the Exchange Offer Registration Statement, (iii) the date on which such Initial Security has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement and (iv) the date on which such Security is distributed to the public pursuant to Rule 144 under the Securities Act.

7. *Rules 144 and 144A.* The Company shall use its commercially reasonable efforts to file the reports required to be filed by it under the Securities Act and the Exchange Act in a timely manner and, if at any time the Company is not required to file such reports, it will, upon the request of any Holder of Initial Securities, make publicly available other information so long as necessary to permit sales of their securities pursuant to Rules 144 and 144A. The Company covenants that it will take such further action as any Holder of Initial Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Initial Securities without registration under the Securities Act within the limitation of the exemptions provided by Rules 144 and 144A (including the requirements of Rule 144A(d)(4)). The Company will provide a copy of this Agreement to prospective purchasers of Initial Securities identified to the Company by the Initial Purchasers upon request. Upon the request of any Holder of Initial Securities, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities pursuant to the Exchange Act.

8. *Underwritten Registrations.* If any of the Transfer Restricted Securities covered by any Shelf Registration are to be sold in an underwritten offering, the investment banker or investment bankers and manager or managers that will administer the offering ("Managing Underwriters") will be selected by the Holders of a majority in aggregate principal amount of such Transfer Restricted Securities to be included in such offering.

No person may participate in any underwritten registration hereunder unless such person (i) agrees to sell such person's Transfer Restricted Securities on the basis reasonably provided in any underwriting arrangements approved by the persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

9. *Miscellaneous.*

(a) *Amendments and Waivers.* The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, except by the Company and the written consent of the Holders of a majority in principal amount of the Securities affected by such amendment, modification, supplement, waiver or consents.

(b) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, first-class mail, facsimile transmission, or air courier which guarantees overnight delivery:

(1) if to a Holder of the Securities, at the most current address given by such Holder to the Company.

(2) if to the Initial Purchasers;

Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010-3629  
Fax No.: (212) 325-4296  
Attention: Transactions Advisory Group

and

UBS Securities LLC  
677 Washington Boulevard  
Stanford, CT 06901  
Fax No.: (203) 719-3667  
Attention: Leveraged Capital Markets

(3) if to the Company, at its address as follows:

Ducommun Incorporated  
23301 Wilmington Avenue  
Carson, CA 90745-6209  
Fax No.: (310) 513-7279  
Attention: James Heiser, Esq.

with a copy to:

Gibson, Dunn & Crutcher LLP  
333 S Grand Ave #4600  
Los Angeles, CA 90071-1512  
Fax No.: (213) 229-6196  
Attention: Dhiya El-Saden, Esq

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; three business days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged by recipient's facsimile machine operator, if sent by facsimile transmission; and on the day delivered, if sent by overnight air courier guaranteeing next day delivery.



(c) *No Inconsistent Agreements.* The Company has not, as of the date hereof, entered into, nor shall it, on or after the date hereof, enter into, any agreement with respect to its securities that is inconsistent with the rights granted to the Holders herein or otherwise conflicts with the provisions hereof.

(d) *Successors and Assigns.* This Agreement shall be binding upon the Company and its successors and assigns.

(e) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(f) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(g) *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

(h) *Severability.* If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(i) *Securities Held by the Company.* Whenever the consent or approval of Holders of a specified percentage of principal amount of Securities is required hereunder, Securities held by the Company or its affiliates (other than subsequent Holders of Securities if such subsequent Holders are deemed to be affiliates solely by reason of their holdings of such Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the several Initial Purchasers and the, the Issuer and the Guarantors in accordance with its terms.

[Signature Pages follow]

Very truly yours,

Ducommun Incorporated

By: /s/ Joseph Bellino

Name: Joseph Bellino

Title: Vice President and Chief Financial Officer

Ducommun AeroStructures, Inc.

Ducommun AeroStructures Mexico, LLC

Ducommun AeroStructures New York, Inc.

Composite Structures, LLC

Ducommun Technologies, Inc.

LaBarge Electronics, Inc.

LaBarge/STC, Inc.

LaBarge Acquisition Company, Inc.

Ducommun LaBarge Technologies, Inc.

CMP Display Systems, Inc.

Miltec Corporation

By: /s/ Joseph Bellino

Name: Joseph Bellino

Title: Vice President

The foregoing Registration Rights Agreement is hereby confirmed and accepted as of the date first above written.

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/ Tim Frazier  
Name: Tim Frazier  
Title: Vice President

The foregoing Registration Rights Agreement is hereby confirmed and accepted as of the date first above written.

UBS SECURITIES LLC

By: /s/ Jeffrey Groves  
Name: Jeffrey Groves  
Title: Managing Director

By: /s/ Richard S. Kim  
Name: Richard S. Kim  
Title: Director

**GUARANTORS:**

Ducommun AeroStructures, Inc.  
Ducommun AeroStructures Mexico, LLC  
Ducommun AeroStructures New York, Inc.  
Composite Structures, LLC  
Ducommun Technologies, Inc.  
LaBarge Electronics, Inc.  
LaBarge/STC, Inc.  
LaBarge Acquisition Company, Inc.  
Ducommun LaBarge Technologies, Inc.  
CMP Display Systems, Inc  
Miltec Corporation

Each broker-dealer that receives Exchange Securities for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Securities. The Letter of Transmittal states that by so acknowledging and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an “underwriter” within the meaning of the Securities Act. This Prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Exchange Securities received in exchange for Initial Securities where such Initial Securities were acquired by such broker-dealer as a result of market-making activities or other trading activities. The Company has agreed that, for a period of 180 days after the Expiration Date (as defined herein), it will make this Prospectus available to any broker-dealer for use in connection with any such resale. See “Plan of Distribution.”

Each broker-dealer that receives Exchange Securities for its own account in exchange for Securities, where such Initial Securities were acquired by such broker-dealer as a result of market-making activities or other trading activities, must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Securities. See “Plan of Distribution.”

## PLAN OF DISTRIBUTION

Each broker-dealer that receives Exchange Securities for its own account pursuant to the Exchange Offer must acknowledge that it will deliver a prospectus in connection with any resale of such Exchange Securities. This Prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of Exchange Securities received in exchange for Initial Securities where such Initial Securities were acquired as a result of market-making activities or other trading activities. The Company has agreed that, for a period of 180 days following the effective date of the Exchange Offer Registration Statement (or shorter period during which Participating Broker-Dealers are required by law to deliver such prospectus), it will make this prospectus, as amended or supplemented, available to any broker-dealer for use in connection with any such resale. In addition, until \_\_\_\_\_, 201\_\_\_\_, all dealers effecting transactions in the Exchange Securities may be required to deliver a prospectus.<sup>(1)</sup>

The Company will not receive any proceeds from any sale of Exchange Securities by broker-dealers. Exchange Securities received by broker-dealers for their own account pursuant to the Exchange Offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the Exchange Securities or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer or the purchasers of any such Exchange Securities. Any broker-dealer that resells Exchange Securities that were received by it for its own account pursuant to the Exchange Offer and any broker or dealer that participates in a distribution of such Exchange Securities may be deemed to be an “underwriter” within the meaning of the Securities Act and any profit on any such resale of Exchange Securities and any commission or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The Letter of Transmittal states that, by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an “underwriter” within the meaning of the Securities Act.

For a period of 180 days after the Expiration Date the Company will promptly send additional copies of this Prospectus and any amendment or supplement to this Prospectus to any broker-dealer that requests such documents in the Letter of Transmittal. The Company has agreed to pay all expenses incident to the Exchange Offer (including the expenses of one counsel for the Holders of the Securities) other than commissions or concessions of any brokers or dealers and will indemnify the Holders of the Securities (including any broker-dealers) against certain liabilities, including liabilities under the Securities Act.

<sup>(1)</sup> In addition, the legend required by Item 502(e) of Regulation S-K will appear on the back cover page of the Exchange Offer prospectus.



CHECK HERE IF YOU ARE A BROKER-DEALER AND WISH TO RECEIVE 10 ADDITIONAL COPIES OF THE PROSPECTUS AND 10 COPIES OF ANY AMENDMENTS OR SUPPLEMENTS THERETO.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

If the undersigned is not a broker-dealer, the undersigned represents that it is not engaged in, and does not intend to engage in, a distribution of Exchange Securities. If the undersigned is a broker-dealer that will receive Exchange Securities for its own account in exchange for Initial Securities that were acquired as a result of market-making activities or other trading activities, it acknowledges that it will deliver a prospectus in connection with any resale of such Exchange Securities; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an “underwriter” within the meaning of the Securities Act.

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**\$250,000,000**

**CREDIT AGREEMENT**

**dated as of June 28, 2011,**

**among**

**DUCOMMUN INCORPORATED,**

**as Borrower,**

**THE GUARANTORS PARTY HERETO,**

**as Guarantors,**

**THE LENDERS PARTY HERETO**

**and**

**UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC,**

**as Joint Lead Arrangers and Joint Bookrunners**

**and**

**UBS AG, STAMFORD BRANCH,**

**as an Issuing Bank, Administrative Agent and Collateral Agent,**

**and**

**UBS LOAN FINANCE LLC,**

**as Swingline Lender**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

**as Documentation Agent**

**and**

**CREDIT SUISSE SECURITIES (USA) LLC,**

**as Syndication Agent**

**and**

**BANK OF AMERICA, N.A.**

**as an Issuing Bank**

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (this “**Agreement**”) dated as of June 28, 2011, among DUCOMMUN INCORPORATED, a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given to it in [Article I](#)), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, “**Arrangers**”), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, “**Swingline Lender**”), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, “**Administrative Agent**”) for the Lenders and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, “**Documentation Agent**”), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, “**Syndication Agent**”) and BANK OF AMERICA, N.A. as an Issuing Bank in respect of the Existing Letters of Credit.

### WITNESSETH:

WHEREAS, Borrower and DLMBS, Inc., a Delaware corporation and a direct Wholly Owned Subsidiary of Borrower (“**Merger Subsidiary**”), have entered into an Agreement and Plan of Merger, dated as of April 3, 2011 (as amended, supplemented or otherwise modified from time to time in accordance with the provisions hereof and thereof, and including the disclosure schedules attached thereto, the “**Acquisition Agreement**”), with LaBarge, Inc., a Delaware corporation (the “**Acquired Business**”), to effectuate the merger of the Acquired Business into Merger Subsidiary (the “**Merger**”), with the Acquired Business surviving the Merger and becoming a Wholly Owned Subsidiary of Borrower.

WHEREAS, Borrower has requested the Lenders to extend credit in the form of (a) Term Loans on the Closing Date, in an aggregate principal amount not in excess of \$190.0 million, and (b) Revolving Loans at any time and from time to time prior to the Revolving Maturity Date, in an aggregate principal amount at any time outstanding not in excess of \$60.0 million, of which no more than \$10.0 million may be drawn on the Closing Date.

WHEREAS, Borrower has requested the Swingline Lender to make Swingline Loans, at any time and from time to time prior to the Revolving Maturity Date, in an aggregate principal amount at any time outstanding not in excess of \$10.0 million.

WHEREAS, Borrower has requested the Issuing Bank to issue letters of credit, in an aggregate face amount at any time outstanding not in excess of \$10.0 million.

WHEREAS, the proceeds of the Loans are to be used in accordance with [Section 3.12](#).



NOW, THEREFORE, the Lenders are willing to extend such credit to Borrower and the Issuing Bank is willing to issue letters of credit for the account of Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS**

**SECTION 1.01 Defined Terms.**

As used in this Agreement, the following terms shall have the meanings specified below:

“**ABR**”, when used in reference to any Loan or Borrowing, is used when such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**ABR Borrowing**” shall mean a Borrowing comprised of ABR Loans.

“**ABR Loan**” shall mean any ABR Term Loan or ABR Revolving Loan.

“**ABR Revolving Loan**” shall mean any Revolving Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“**ABR Term Loan**” shall mean any Term Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“**Acceptable Price**” shall have the meaning assigned to such term in Section 2.21(c).

“**Acceptance Date**” shall have the meaning assigned to such term in Section 2.21(b).

“**Accounting Changes**” shall have the meaning assigned to such term in Section 1.04(d).

“**Accounts Receivable Program**” means (i) the accounts receivable discount sales program solely with respect to the accounts receivable of “the Buyer” (as identified therein as of the date hereof) established pursuant to the Supplier Agreement between LaBarge, Inc. and Citibank, N.A. dated as of June 9, 2005, as amended on February 1, 2010, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder, (ii) the accounts receivable discount sales program solely with respect to the accounts receivable of “the Buyer” (as identified therein as of the date hereof) established pursuant to the Supplier Agreement between Ducommun Aerostructures New York, Inc. and Citibank, N.A. dated as of November 20, 2009, and as amended, supplemented or otherwise modified from time to time to the extent permitted hereunder, (iii) the accounts receivable discount sales program solely with respect to the accounts receivable of “the Buyer” (as identified therein as of the date hereof) established pursuant to the Supplier Agreement between CMP Display Systems, Inc. and Citibank, N.A. dated as of December 21, 2010, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder, (iv) the accounts receivable discount sales program solely with respect to the accounts receivable of “the Buyer” (as identified therein as of the date hereof) established pursuant to the Supplier Agreement between Ducommun AeroStructures, Inc. and Citibank, N.A. dated as of March 11, 2005, as amended on August 31, 2010, and as further amended, supplemented or otherwise modified from time to time to the extent permitted hereunder and (v) any accounts receivable discount sales

program (a) that contains terms and is pursuant to an agreement in form and substance substantially similar to those set forth in clauses (i), (ii), (iii) and (iv) established in the good faith business judgment of the Company or (b) that is reasonably satisfactory to the Administrative Agent, in each case as such agreements may be amended, supplemented or otherwise modified from time to time to the extent permitted hereunder.

“**Acquired Business**” shall have the meaning assigned to such term in the first recital hereto.

“**Acquisition Agreement**” shall have the meaning assigned to such term in the first recital hereto.

“**Acquisition Agreement Representations**” shall have the meaning assigned to such term in Section 4.01(s).

“**Acquisition Consideration**” shall mean the purchase consideration for any Permitted Acquisition and all other payments by Borrower or any of its Subsidiaries in exchange for, or as part of, or in connection with, any Permitted Acquisition, whether paid in cash or by exchange of Equity Interests (other than Qualified Capital Stock of the Borrower to the extent not constituting a Change in Control hereunder) or of properties or otherwise and whether payable at or prior to the consummation of such Permitted Acquisition or deferred for payment at any future time, whether or not any such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, “earn-outs” and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any person or business; *provided* that any such future payment that is subject to a contingency shall be considered Acquisition Consideration only to the extent either (i) the obligation to make such payment is required to be reflected on the face of the balance sheet of Borrower or any of its Subsidiaries or (ii) a reserve is required to be established in respect thereof by Borrower or any of its Subsidiaries, in each case under GAAP at the time of such sale.

“**Acquisition Documents**” shall mean the collective reference to the Acquisition Agreement and the other documents listed on Schedule 3.21.

“**Additional Senior Unsecured Indebtedness**” means senior unsecured Indebtedness (a) the sole obligor of which is the Borrower, (b) that will not mature prior to the 91st day following the Final Maturity Date, (c) that has no scheduled amortization of principal or required or mandatory redemptions, or repurchases, sinking fund obligation or payments of principal prior to the 91st day following the Final Maturity Date (other than customary offers to repurchase upon a change of control, asset sale or condemnation event on market terms at the time of issuance), (d) bears interest that is a market rate of interest on the date of issuance of such Indebtedness as determined by the Borrower’s Board of Directors in good faith, and (e) the covenants, events of default and other material terms of which (other than fees, discounts, interest rate and redemption premiums) are not, taken as a whole, more restrictive to the Borrower and the Subsidiaries in any material respect than those in this Agreement; *provided*, that the terms of any such Indebtedness shall not include any financial maintenance covenant; *provided, further*, for the avoidance of doubt that any such Indebtedness may be guaranteed by any Guarantor hereunder to the extent permitted by Section 6.01.

“**Adjusted LIBOR Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, (a) an interest rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) determined by the Administrative Agent to be equal to the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (b) 1 *minus* the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period; *provided* that the Adjusted LIBOR Rate shall be deemed to be not less than 1.25% per annum.

“**Administrative Agent**” shall have the meaning assigned to such term in the preamble hereto and includes each other person appointed as the successor pursuant to Article X.

“**Administrative Agent Fee**” shall have the meaning assigned to such term in Section 2.05(b).

“**Administrative Questionnaire**” shall mean an Administrative Questionnaire in substantially the form of Exhibit A.

“**Affiliate**” shall mean, when used with respect to a specified 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; *provided, however*, that, for purposes of Section 6.08, the term “Affiliate” shall also include any person that directly or indirectly owns more than 10% of any class of Equity Interests of the person specified.

“**Agents**” shall mean the Administrative Agent and the Collateral Agent; and “**Agent**” shall mean any of them.

“**Agreement**” shall have the meaning assigned to such term in the preamble hereto.

“**Alternate Base Rate**” shall mean, for any day, a fluctuating rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the greatest of (a) the Base Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day *plus* 0.50% and (c) the Adjusted LIBOR Rate for an Interest Period of one-month beginning on such day (or if such day is not a Business Day, on the immediately preceding Business Day) *plus* 1.00%; *provided* that the Alternate Base Rate shall be deemed to be not less than 2.25% per annum. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate, the Federal Funds Effective Rate or the Adjusted LIBOR Rate shall be effective on the effective date of such change in the Base Rate, the Federal Funds Effective Rate or the Adjusted LIBOR Rate, as the case may be.

“**Anti-Money Laundering Laws**” shall mean any Requirements of Law related to money laundering, including 18 U.S.C. §§ 1956 and 1957 and the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.*, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (“**USA PATRIOT Act**”) of 2001 (Title III of Pub. L. 107-56), and its implementing regulations (collectively, the “Bank Secrecy Act”).

“**Anti-Terrorism Laws**” shall mean any Requirements of Law related to terrorism financing and economic sanctions, including the Trading With the Enemy Act (50 U.S.C. § 1 *et seq.*, as amended), the International Emergency Economic Powers Act (50 U.S.C. §1701 *et seq.*, as amended) and Executive Order 13224 (effective September 24, 2001), and their implementing regulations.

“**Applicable Discount**” shall have the meaning assigned to such term in Section 2.21(c).

“**Applicable ECF Percentage**” shall mean, for any fiscal year, (a) 50% if the Total Leverage Ratio as of the last day of such fiscal year is greater than or equal to 3.50 to 1.00, (b) 25% if the Total Leverage Ratio as of the last day of such fiscal year is less than 3.50 to 1.00 but greater than or equal to 2.50 to 1.00 and (c) 0% if the Total Leverage Ratio as of the last day of such fiscal year is less than 2.50 to 1.00.

“**Applicable Margin**” shall mean, for any day, (a) with respect to ABR Loans, 3.25% and (b) with respect to Eurodollar Loans, 4.25%.

“**Approved Fund**” shall mean 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.

“**Arrangers**” shall have the meaning assigned to such term in the preamble hereto.

“**Asset Sale**” shall mean (a) any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any Sale and Leaseback Transaction) of any property excluding (i) sales of inventory and dispositions of cash and Cash Equivalents, in each case, in the ordinary course of business, by Borrower or any of its Subsidiaries, (ii) dispositions of used, worn out, obsolete or surplus property by any Company in the ordinary course of business and the abandonment or other disposition of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Companies taken as a whole, (iii) any sales, assignments, transfers, leases, licenses or other dispositions of property, including, dispositions of cash and Cash Equivalents, in each case, in the ordinary course of business, by any Company to Borrower or to any Subsidiary Guarantor, (iv) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien) permitted by Section 6.02, (v) non-recourse sales of accounts receivable of the Borrower or any Subsidiary pursuant to and in accordance with the terms of an Accounts Receivable Program, (vi) the disposition of any property or other assets of the Borrower or any of its Subsidiaries by reason of theft, loss, physical destruction or damage, taking or similar event and (vii) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract claims, tort claims or other claims of any kind and (b) any issuance or sale of any Equity Interests of any Subsidiary of Borrower, in each case, to any person other than (i) Borrower, (ii) any Subsidiary Guarantor or (iii) other than for purposes of Section 6.06, any other Subsidiary.

“**Assignment and Assumption**” shall mean 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 10.04(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit B, or any other form approved by the Administrative Agent.

“**Attributable Indebtedness**” shall mean, when used with respect to any Sale and Leaseback Transaction, as at the time of determination, the present value (discounted at a rate equivalent to Borrower’s then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

“**Auto-Renewal Letter of Credit**” shall have the meaning assigned to such term in Section 2.18(c)(ii).

“**Available Net Assets**” shall have the meaning assigned to such term in Section 7.10.

“**Bailee Letter**” shall have the meaning assigned thereto in the Security Agreement.

“**Bankruptcy Code**” shall mean Title 11 of the United State Code, as amended, or any similar federal or state law for the relief of debtors.

“**Base Rate**” shall mean, for any day, a rate per annum that is equal to the corporate base rate of interest established by the Administrative Agent from time to time; each change in the Base Rate shall be effective on the date such change is effective. The corporate base rate is not necessarily the lowest rate charged by the Administrative Agent to its customers.

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

“**Board of Directors**” shall mean, with respect to any person, (i) in the case of any corporation, the board of directors of such person, (ii) in the case of any limited liability company, the manager, board of managers, or sole member of such person authorized to act on behalf of such person, (iii) in the case of any partnership, the general partner or managing general partner of such person and (iv) in any other case, the functional equivalent of the foregoing.

“**Borrower**” shall have the meaning assigned to such term in the preamble hereto.

“**Borrowing**” shall mean (a) Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, or (b) a Swingline Loan.

“**Borrowing Request**” shall mean a request by Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C, or such other form as shall be approved by the Administrative Agent.

“**Business Day**” shall mean any day other than a Saturday, Sunday or other day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“**Capital Assets**” shall mean, with respect to any person, all equipment, fixed assets and Real Property or improvements of such person, or replacements or substitutions therefor or additions thereto, that, in accordance with GAAP, have been or should be reflected as additions to property, plant or equipment on the balance sheet of such person.

“**Capital Expenditures**” shall mean, for any period, without duplication, all expenditures made directly or indirectly by Borrower and its Subsidiaries during such period for Capital Assets (whether paid in cash or other consideration, financed by the incurrence of Indebtedness or accrued as a liability), but excluding (i) expenditures made in connection with the reinvestment of Asset Sale proceeds pursuant to Section 2.10(c) or in connection with the replacement, substitution or restoration of property pursuant to Section 2.10(f), (ii) any portion of such expenditures attributable solely to acquisitions of property, plant and equipment in Permitted Acquisitions and (iii) leasehold improvement expenditures that are actually paid for by unaffiliated third party landlords in the ordinary course of business and which no Company has provided or is required to provide or incur any consideration or obligation to such third party landlord. For purposes of this definition, the purchase price of equipment or other fixed assets that are purchased simultaneously with the trade-in of existing assets or with insurance proceeds 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 assets for the assets being traded in at such time or the amount of such insurance proceeds, as the case may be.

“**Capital Lease Obligations**” of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“**Captive Insurance Entity**” means any Person (other than an individual) created solely for the purpose of purchasing or providing, or facilitating the provision of, insurance for products liability, workers compensation, property damage, professional indemnity, employee benefits, employer’s liability and motor and medical expenses, in each case, to the extent that such insurance may be so purchased, provided, or facilitated in accordance with applicable Requirements of Law.

“**Cash Equivalents**” shall mean, as to any person, (a) securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in

support thereof) having maturities of not more than one year from the date of acquisition by such person; (b) time deposits and certificates of deposit of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of \$200.0 million and a rating of “A” (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) with maturities of not more than one year from the date of acquisition by such person; (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities; (d) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by Standard & Poor’s Ratings Group or at least P-1 or the equivalent thereof by Moody’s Investors Service Inc., and in each case maturing not more than one year after the date of acquisition by such person; (e) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (d) above; and (f) demand deposit accounts maintained in the ordinary course of business.

“**Casualty Event**” shall mean any involuntary loss of title, any involuntary loss of, damage to or any destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of Borrower or any of its Subsidiaries. “Casualty Event” shall include but not be limited to any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Requirements of Law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, civil or military, or any settlement in lieu thereof.

“**CERCLA**” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* and all implementing regulations.

A “**Change in Control**” shall be deemed to have occurred if:

(a) at any time a change of control occurs under the Senior Notes or any other Material Indebtedness;

(b) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause such person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Voting Stock of Borrower representing more than 35% of the voting power of the total outstanding Voting Stock of Borrower; or

(c) individuals who on the Closing Date constituted the Board of Directors (together with any new directors whose election or appointment by such Board of Directors or whose nomination for election by the shareholders of the Borrower was approved by a vote of a majority of the directors of the Borrower then still in office who were either directors on the Closing Date or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors then in office.

For purposes of this definition, a person shall not be deemed to have beneficial ownership of Equity Interests subject to a stock purchase agreement, merger agreement or similar agreement until the consummation of the transactions contemplated by such agreement.

“**Change in Law**” shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking into effect of any law, treaty, order, policy, rule or regulation, (b) any change in any law, treaty, order, policy, rule or regulation 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; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Charges**” shall have the meaning assigned to such term in Section 10.14.

“**Class**,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Term Loans, Incremental Term Loans the terms of which are not identical to Term Loans or Swingline Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment, Term Loan Commitment, Incremental Term Loan Commitment or Swingline Commitment, in each case, under this Agreement as originally in effect or pursuant to Section 2.20, of which such Loan, Borrowing or Commitment shall be a part.

“**Closing Date**” shall mean the date of the initial Credit Extension hereunder.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Collateral**” shall mean, collectively, all of the Security Agreement Collateral, the Mortgaged Property and all other property of whatever kind and nature subject or purported to be subject from time to time to a Lien under any Security Document.

“**Collateral Agent**” shall have the meaning assigned to such term in the preamble hereto.

“**Commercial Letter of Credit**” shall mean any letter of credit or similar instrument issued for the purpose of providing credit support in connection with the purchase of materials, goods or services by Borrower or any of its Subsidiaries in the ordinary course of their businesses.



“**Commitment**” shall mean, with respect to any Lender, such Lender’s Revolving Commitment, Term Loan Commitment or Swingline Commitment, and any Commitment to make Term Loans of a new Class extended by such Lender as provided in Section 2.20.

“**Commitment Fee**” shall have the meaning assigned to such term in Section 2.05(a).

“**Commitment Letter**” shall mean the commitment letter dated April 3, 2011 by and among Ducommun Incorporated, UBS Loan Finance LLC, UBS Securities LLC, Credit Suisse AG and Credit Suisse Securities (USA) LLC.

“**Companies**” shall mean Borrower and its Subsidiaries; and “**Company**” shall mean any one of them.

“**Compliance Certificate**” shall mean a certificate of a Financial Officer substantially in the form of Exhibit D.

“**Confidential Information Memorandum**” shall mean that certain confidential information memorandum dated as of May 2011.

“**Consolidated Amortization Expense**” shall mean, for any period, the amortization expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated Current Assets**” shall mean, as at any date of determination, the total assets of Borrower and its Subsidiaries which may properly be classified as current assets on a consolidated balance sheet of Borrower and its Subsidiaries in accordance with GAAP, excluding the following: cash and Cash Equivalents and the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to any consummated acquisition.

“**Consolidated Current Liabilities**” shall mean, as at any date of determination, the total liabilities of Borrower and its Subsidiaries which may properly be classified as current liabilities (other than the current portion of (i) any Loans or (ii) any Indebtedness with a scheduled final maturity greater than one year at the time of incurrence) on a consolidated balance sheet of Borrower and its Subsidiaries in accordance with GAAP, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to any consummated acquisition.

“**Consolidated Depreciation Expense**” shall mean, for any period, the depreciation expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated EBITDA**” shall mean, for any period, Consolidated Net Income for such period, adjusted by (x) *adding thereto*, in each case only to the extent deducted in determining such Consolidated Net Income and without duplication:

(a) Consolidated Interest Expense for such period,

(b) Consolidated Amortization Expense for such period,

(c) Consolidated Depreciation Expense for such period,

(d) Consolidated Tax Expense for such period,

(e) (i) costs and expenses directly incurred in connection with the Transactions, and (ii) costs and expenses in respect of any employment agreement (including severance costs), change in control (including with respect to the long term incentive program of the Acquired Business), stock based compensation or employee incentive agreement in respect of the Transactions (not to exceed with respect to clause (ii) \$10.0 million in the aggregate),

(f) the aggregate amount of all other non-cash charges, expenses or losses reducing Consolidated Net Income (excluding any non-cash charge, expense or loss that results in an accrual of a reserve for cash charges in any future period and any non-cash charge, expense or loss relating to write-offs, write-downs or reserves with respect to accounts or inventory) for such period,

(g) (i) fees, expenses, financing costs, severance costs and management bonuses incurred or paid in connection with any Permitted Acquisition after the Closing Date, including attorneys' fees and (ii) costs and expenses in respect of any employment agreement, change in control, stock based compensation or employee incentive agreement or plan or other employee benefit agreement or plan arising in connection with a Permitted Acquisition after the Closing Date or the occurrence of a change in control as defined under such compensation agreement or plan; *provided* that amounts under this clause (g) shall not exceed \$5.0 million per fiscal year,

(h) reasonable and customary fees, expenses, premiums and other charges in connection with the issuance or repayment of Indebtedness, the issuance of Equity Interests, any refinancing transaction, amendment or other modification of any debt instrument, the making of any Investment, any Asset Sale or disposition not constituting an Asset Sale, in each case to the extent permitted by the terms of this Agreement (in each case whether or not consummated and in each case including reasonable and customary investment banking and attorneys' fees),

(i) any losses attributable to the extinguishment of any Hedging Obligations or other derivative instruments,

(j) any extraordinary or non-recurring loss, expense or charge recorded or recognized by Borrower or any of its Subsidiaries during such period; *provided* that the amount of any non-recurring loss, expense or charge during any period shall not exceed \$5.0 million,

(k) any net loss from discontinued operations and any net loss on disposal of discontinued operations; and

(y) *subtracting therefrom* the aggregate amount of the following to the extent increasing Consolidated Net Income: (a) all non-cash items increasing Consolidated Net Income (other than (1) the accrual of revenue or recording of receivables in the ordinary course of business and (2) any non-cash items to be received in cash in any future period or any non-cash income or gain that results from a reversal of write-offs, write-downs and reserves with respect to accounts or

inventory) for such period, (b) any gains attributable to the extinguishment of any Hedging Obligations or other derivative instruments, (c) any extraordinary or non-recurring gain recorded or recognized by Borrower or any of its Subsidiaries during such period and (d) any net gain from discontinued operations or any net gain on disposal of discontinued operations.

Notwithstanding the foregoing, Consolidated EBITDA (1) for the fiscal quarter ended on July 3, 2010 shall be deemed to be \$23.676 million, (2) for the fiscal quarter ended on October 2, 2010 shall be deemed to be \$21.313 million, (3) for the fiscal quarter ended on December 31, 2010 shall be deemed to be \$19.770 million and (4) for the fiscal quarter ended on April 2, 2011 shall be deemed to be \$21.288 million.

Other than for purposes of calculating Excess Cash Flow, Consolidated EBITDA shall be calculated on a Pro Forma Basis (including Pro Forma Cost Savings if applicable) to give effect to the Merger, any Permitted Acquisition and Asset Sales (other than any dispositions in the ordinary course of business) consummated at any time on or after the first day of the Test Period and prior to the date of determination as if the Merger and each such Permitted Acquisition had been effected on the first day of such period and as if each such Asset Sale had been consummated on the day prior to the first day of such period. Furthermore, Consolidated EBITDA shall be calculated without regard to (1) the cumulative effect of a change in accounting principles during such period and (2) effects of adjustments pursuant to GAAP resulting from the application of purchase accounting in relation to the Merger or any Permitted Acquisition.

**“Consolidated Indebtedness”** shall mean, as at any date of determination, the aggregate amount of all Indebtedness set forth on the consolidated balance sheet of Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP (*provided* that notwithstanding any provision herein to the contrary, Consolidated Indebtedness shall be determined without giving effect to any OID or upfront fees (which shall be deemed to constitute like amounts of OID)).

**“Consolidated Interest Expense”** shall mean, for any period, the total consolidated interest expense of Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP *plus*, without duplication:

(a) imputed interest on Capital Lease Obligations and Attributable Indebtedness of Borrower and its Subsidiaries for such period;

(b) commissions, discounts and other fees and charges owed by Borrower or any of its Subsidiaries with respect to letters of credit securing financial obligations, bankers’ acceptance financing and receivables financings for such period;

(c) amortization of debt issuance costs, debt discount or premium and other financing fees and expenses incurred by Borrower or any of its Subsidiaries for such period;

(d) cash contributions to any employee stock ownership plan or similar trust made by Borrower or any of its Subsidiaries to the extent such contributions are used by such plan or trust to pay interest or fees to any person (other than Borrower or a Wholly Owned Subsidiary) in connection with Indebtedness incurred by such plan or trust for such period;

- (e) all interest paid or payable with respect to discontinued operations of Borrower or any of its Subsidiaries for such period;
- (f) the interest portion of any deferred payment obligations of Borrower or any of its Subsidiaries for such period; and
- (g) net costs under Hedging Agreements related to interest rates.

Consolidated Interest Expense shall be calculated on a Pro Forma Basis to give effect to any Indebtedness (other than Indebtedness incurred for ordinary course working capital needs under ordinary course revolving credit facilities) incurred, assumed or permanently repaid or extinguished at any time on or after the first day of the Test Period and prior to the date of determination in connection with the Merger, any Permitted Acquisitions and Asset Sales (other than any dispositions in the ordinary course of business) as if such incurrence, assumption, repayment or extinguishing had been effected on the first day of such period.

**“Consolidated Net Income”** shall mean, for any period, the consolidated net income (or loss) of Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such net income (to the extent otherwise included therein), without duplication:

(a) the net income (or loss) of any person (other than a Subsidiary of Borrower) in which any person other than Borrower and its Subsidiaries has an ownership interest, except to the extent that cash in an amount equal to any such income has actually been received by Borrower or (subject to clause (b) below) any of its Subsidiaries during such period;

(b) the net income of any Subsidiary of Borrower during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of that income is not permitted by operation of the terms of its Organizational Documents or any agreement, instrument or Requirements of Law applicable to that Subsidiary during such period, except that Borrower’s equity in net loss of any such Subsidiary for such period shall be included in determining Consolidated Net Income;

(c) any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized during such period by Borrower or any of its Subsidiaries upon any Asset Sale (other than any dispositions in the ordinary course of business) by Borrower or any of its Subsidiaries;

(d) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such period;

(e) earnings resulting from any reappraisal, revaluation or write-up of assets; and

(f) unrealized gains and losses with respect to Hedging Obligations for such period.

**“Consolidated Tax Expense”** shall mean, for any period, the tax expense of Borrower and its Subsidiaries, for such period, determined on a consolidated basis in accordance with GAAP.

**“Consolidated Working Capital Adjustment”** shall mean, for any period on a consolidated basis, the amount (which may be a negative number) by which Net Working Capital as of the beginning of such period exceeds (or is less than) Net Working Capital as of the end of such period. For purposes of calculating the Consolidated Working Capital Adjustment, (i) for any period in which a Permitted Acquisition occurs, the “consolidated current assets” and “consolidated current liabilities” acquired as of the date such Permitted Acquisition is consummated shall be added to Consolidated Current Assets or Consolidated Current Liabilities, as the case may be, as of the first day of the applicable Excess Cash Flow Period, (ii) for any period in which an Asset Sale occurs, the “consolidated current assets” and “consolidated current liabilities” transferred in such Asset Sale, as of the date such Asset Sale is consummated shall be deducted from Consolidated Current Assets or Consolidated Current Liabilities, as the case may be, as of the first day of the applicable Excess Cash Flow Period and (iii) any reclassification of Consolidated Current Assets and Consolidated Current Liabilities to, respectively, consolidated long-term assets or long-term liabilities on the Borrower’s consolidated balance sheet in accordance with GAAP, and vice versa, shall be disregarded.

**“Contingent Obligation”** shall mean, as to any person, any obligation, agreement, understanding or arrangement of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“**primary obligations**”) of any other person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers’ acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term “Contingent Obligation” shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

**“Control”** shall mean 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 ownership of voting securities, by contract or otherwise, and the terms “**Controlling**” and “**Controlled**” shall have meanings correlative thereto.

**“Control Agreement”** shall have the meaning assigned to such term in the Security Agreement.

“**Cost Savings Certificate**” shall have the meaning assigned to such term in the definition of “**Pro Forma Cost Savings**”.

“**Credit Extension**” shall mean, as the context may require, (i) the making of a Loan by a Lender or (ii) the issuance of any Letter of Credit, or the amendment, extension or renewal of any existing Letter of Credit, by the Issuing Bank.

“**Debt Issuance**” shall mean the incurrence by Borrower or any of its Subsidiaries of any Indebtedness after the Closing Date (other than as permitted by Section 6.01).

“**Debtor Relief Laws**” shall mean 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**” shall mean any event, occurrence or condition which is, or upon notice, lapse of time or both would constitute, an Event of Default.

“**Default Rate**” shall have the meaning assigned to such term in Section 2.06(c).

“**Defaulting Lender**” shall mean any Lender, as reasonably determined by the Administrative Agent, that (a) has failed to fund any portion of its Loans or participations in Letters of Credit or Swingline Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder (unless such failure is a result of a good faith dispute), (b) has notified the Administrative Agent, the Issuing Bank, the Swingline Lender, any Lender and/or Borrower in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent or the Borrower, acting in good faith, to confirm in writing that it will (and is financially able to) comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans (provided that such Lender shall cease to be a Defaulting Lender upon receipt of such written confirmation by Administrative Agent and/or the Borrower), (d) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, or (e) in the case of a Lender that has a Commitment, LC Exposure or Swingline Exposure outstanding at such time, shall take, or is the Subsidiary of any person that has taken, any action or be (or is) the subject of any action or proceeding of a type described in Section 8.01(g) or (h) (or any comparable proceeding initiated by a regulatory authority having jurisdiction over such Lender or such person); provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such person.

“Discount Range” shall have the meaning assigned to such term in Section 2.21(b).

“Discounted Prepayment Option Notice” shall have the meaning assigned to such term in Section 2.21(b).

“Discounted Voluntary Prepayment” shall have the meaning assigned to such term in Section 2.21(a).

“Discounted Voluntary Prepayment Notice” shall have the meaning assigned to such term in Section 2.21(e).

“Disqualified Capital Stock” shall mean any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the 180<sup>th</sup> day after the Final Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in (a) above, in each case at any time on or prior to the 180<sup>th</sup> day after the Final Maturity Date, or (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations; *provided, however*, that any Equity Interests that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the 180<sup>th</sup> day after the Final Maturity Date shall not constitute Disqualified Capital Stock if such Equity Interests provide that the issuer thereof will not redeem or repurchase any such Equity Interests pursuant to such provisions prior to the repayment in full of the Obligations.

“Dividend” with respect to any person shall mean that such person has declared or paid a dividend or returned any equity capital to the holders of its Equity Interests or authorized or made any other distribution, payment or delivery of property (other than Qualified Capital Stock of such person) or cash to the holders of its or any of its parent companies’ Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any of its Equity Interests outstanding (or any options or warrants issued by such person or any of its parent companies with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the Equity Interests of such person or any of its parent companies outstanding (or any options or warrants issued by such person or any of its parent companies with respect to its Equity Interests). Without limiting the foregoing, “Dividends” with respect to any person shall also include all payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes.

“**Documentation Agent**” shall have the meaning assigned to such term in the preamble hereto.

“**dollars**” or “**\$**” shall mean lawful money of the United States.

“**Domestic Subsidiary**” shall mean any Subsidiary that is organized or existing under the laws of the United States, any state thereof or the District of Columbia.

“**Eligible Assignee**” shall mean any person to whom Loans and Commitments are permitted to be assigned pursuant to Section 10.04(b)(i); *provided* that “Eligible Assignee” shall not include Borrower or any of its Affiliates or Subsidiaries or any natural person.

“**Embargoed Person**” shall mean any party that (i) is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by the U.S. Treasury Department’s Office of Foreign Assets Control (“**OFAC**”), is a “designated national” pursuant to OFAC’s Cuban Assets Control Regulations (31 C.F.R. 515.305); or (ii) is publicly identified as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act, or any other Requirements of Law.

“**Environment**” shall mean ambient air, indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources, the workplace or as otherwise defined in any Environmental Law.

“**Environmental Claim**” shall mean any claim, notice, demand, order, action, suit, proceeding or other communication alleging liability for or obligation with respect to any investigation, remediation, removal, cleanup, response, corrective action, damages to natural resources, personal injury, property damage, fines, penalties or other costs resulting from, related to or arising out of (i) the presence, Release or threatened Release in or into the Environment of Hazardous Material at any location or (ii) any violation or alleged violation of any Environmental Law, and shall include any claim seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Material or alleged injury or threat of injury to health, safety or the Environment.

“**Environmental Law**” shall mean any and all present and future treaties, laws, statutes, ordinances, regulations, rules, decrees, orders, judgments, consent orders, consent decrees, code or other binding requirements, and the common law, relating to protection of public health or the Environment, the Release or threatened Release of Hazardous Material, natural resources or natural resource damages, or occupational safety or health, and any and all Environmental Permits.

“**Environmental Permit**” shall mean any permit, license, approval, registration, notification, exemption, consent or other authorization required by or from a Governmental Authority under Environmental Law.

“**Equipment**” shall have the meaning assigned to such term in the Security Agreement.



**“Equity Interest”** shall mean, with respect to any person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such person, including, if such person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, whether outstanding on the date hereof or issued after the Closing Date, but excluding debt securities convertible or exchangeable into such equity.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

**“ERISA Affiliate”** shall mean, with respect to any person, any trade or business (whether or not incorporated) that, together with such person, is treated as a single employer under Section 414 of the Code.

**“ERISA Event”** shall mean (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) with respect to a Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code and Section 302 of ERISA, whether or not waived; (c) the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence by any Company or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by any Company or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans in a distress termination pursuant to Section 4041(c) of ERISA or to appoint a trustee to administer any Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (g) the incurrence by any Company or any of its ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (h) the receipt by any Company or its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (i) the “substantial cessation of operations” within the meaning of Section 4062(e) of ERISA with respect to a Plan resulting in liability to any Company; (j) the making of any amendment to any Plan which could result in the imposition of a lien or the posting of a bond or other security; and (k) the occurrence of a non-exempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability to any Company.

**“Eurodollar Borrowing”** shall mean a Borrowing comprised of Eurodollar Loans.

**“Eurodollar Loan”** shall mean any Eurodollar Revolving Loan or Eurodollar Term Loan.

“**Eurodollar Revolving Borrowing**” shall mean a Borrowing comprised of Eurodollar Revolving Loans.

“**Eurodollar Revolving Loan**” shall mean any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

“**Eurodollar Term Borrowing**” shall mean a Borrowing comprised of Eurodollar Term Loans.

“**Eurodollar Term Loan**” shall mean any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

“**Event of Default**” shall have the meaning assigned to such term in Section 8.01.

“**Excess Amount**” shall have the meaning assigned to such term in Section 2.10(h).

“**Excess Cash Flow**” shall mean, for any Excess Cash Flow Period, the excess, if any, of (a) the sum, without duplication, of (i) Consolidated EBITDA for such Excess Cash Flow Period, and (ii) the Consolidated Working Capital Adjustment for such Excess Cash Flow Period, over (b) the sum, without duplication, of:

(i) scheduled principal payments in respect of Indebtedness of the Borrower or any Subsidiary and the permanent repayment of the principal component of Capitalized Lease Obligations, in each case made with Internally Generated Cash during such Excess Cash Flow Period;

(ii) Capital Expenditures and Investments made pursuant to Section 6.04(e) and (h), in each case made with Internally Generated Cash during such Excess Cash Flow Period;

(iii) Consolidated Tax Expense, to the extent paid or payable in cash with respect to such Excess Cash Flow Period;

(iv) without duplication of amounts deducted from Excess Cash Flow in prior Excess Cash Flow Periods or such Excess Cash Flow Period, to the extent set forth in a certificate of a Responsible Officer delivered to the Administrative Agent at or before the time the Compliance Certificate for the period ending simultaneously with such Excess Cash Flow Period is required to be delivered pursuant to Section 5.01(d), the aggregate amount that shall be required to be paid in cash in respect of Capital Expenditures to be made by the Borrower or any Subsidiary during the 90 days following such Excess Cash Flow Period pursuant to binding contracts (the “**Contract Amount**”) entered into prior to or during such Excess Cash Flow Period; *provided* that to the extent the aggregate amount of Internally Generated Cash actually utilized to finance such Capital Expenditures during such 90-day period is less than the Contract Amount, the amount of such shortfall shall be added to Excess Cash Flow for the Excess Cash Flow Period following such Excess Cash Flow Period;

(v) the aggregate amount actually paid by Borrower and its Subsidiaries in cash during such Excess Cash Flow Period on account of Consolidated Interest Expense;

(vi) the aggregate amount of any cash payments made during such Excess Cash Flow Period in respect of expenses and losses (minus the aggregate amount of any cash received in respect of gains) referred to in clause (f) of the definition of "Consolidated Net Income" included in determining Consolidated Net Income for such Excess Cash Flow Period;

(vii) reasonable and customary expenses incurred in connection with the issuance, prepayment, amendment or refinancing of Indebtedness or issuance of Equity Interests or consummation of an Asset Sale permitted hereunder during such Excess Cash Flow Period to the extent paid from Internally Generated Cash; and

(viii) reasonable fees, costs and expenses paid from Internally Generated Cash that are incurred in connection with the Transactions or any Permitted Acquisition (whether or not consummated) in respect of any employment agreements, change in control, stock based compensation or employee incentive agreement or plan or other employee benefit agreement or plan arising in connection with the Transactions or such Permitted Acquisition or the occurrence of a change in control as defined under such compensation agreement or plan; *provided* that the deduction from Excess Cash Flow shall be limited to (1) in the case of the Transactions, severance payments and payments arising in connection with the change of control of the Acquired Business, in each case to the extent made during the Excess Cash Flow Period ending December 31, 2012 and (2) in each case of Permitted Acquisitions occurring after the Closing Date, \$5.0 million of payments made during the relevant Excess Cash Flow Period.

"**Excess Cash Flow Period**" shall mean (i) the period taken as one accounting period from January 1, 2012 and ending December 31, 2012 and (ii) each fiscal year of Borrower thereafter.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Excluded Taxes**" shall mean, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any Obligation of Borrower hereunder, (a) taxes imposed on or measured by its overall net income or profits or franchise taxes imposed on it (in lieu of net income taxes), however denominated, by a jurisdiction (or any subdivision thereof or therein) as a result of the recipient being organized or having its principal office or, in the case of any Lender, its applicable lending office in such jurisdiction, or by any other jurisdiction (or any subdivision thereof or therein) as a result of a present or former connection between the recipient and such jurisdiction (other than solely as a result of the recipient's being party to, executing, receiving payments under or enforcing the Loan Documents), (b) any branch profits taxes or similar taxes imposed on a Lender by a jurisdiction described in clause (a), (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by Borrower under Section 2.16), any U.S. federal withholding tax that is imposed on interest payments pursuant to any Requirements of Law that are in effect at the time such Foreign Lender becomes a party hereto (or designates a new lending office), except to the extent that such Foreign Lender or such Foreign Lender's assignor, if any, was entitled,

immediately prior to such assignment (or designation), to receive additional amounts or indemnity payments with respect to such withholding tax pursuant to Section 2.15; provided that this subclause (c) shall not apply to any tax imposed on a Lender in connection with an interest or participation in any Loan or other obligation that such Lender was required to acquire pursuant to Section 2.14(d), (d) any U.S. federal withholding tax that is attributable to such Lender's failure to comply with Section 2.15(e), (e) any Taxes imposed pursuant to FATCA or (f) penalties and interest imposed by a Governmental Authority with respect to any of the foregoing.

**"Existing Lien"** shall have the meaning assigned to such term in Section 6.02(c).

**"Existing Letters of Credit"** shall mean, as of the Closing Date, those letters of credit set forth on Annex II.

**"FATCA"** shall mean Sections 1471 through 1474 of the Code, as of the date hereof (and any amended or successor version that is substantively comparable, provided that any such amended or successor version imposes criteria that are not substantially more onerous than those contained in such sections as enacted on the Closing Date) and regulations, published administrative guidance, and official interpretations thereof.

**"Federal Funds Effective Rate"** shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System of the United States arranged by federal funds brokers, as published on the next succeeding 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 the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

**"Fee Letter"** shall mean the confidential fee letter, dated as of April 3, 2011, among Borrower, the Arrangers and certain of their Affiliates, and any other fee letters entered into from time to time related to the Loan Documents.

**"Fees"** shall mean the Commitment Fees, the Administrative Agent Fees, the LC Participation Fees, the Fronting Fees and all fees payable pursuant to Section 2.05(c).

**"Final Maturity Date"** shall mean the latest of the Revolving Maturity Date, the Term Loan Maturity Date and any Incremental Term Loan Maturity Date applicable to existing Incremental Term Loans, as of any date of determination.

**"Financial Officer"** of any person shall mean the chief financial officer, principal accounting officer, treasurer or controller of such person.

**"FIRREA"** shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

**"Foreign Asset Sale"** shall have the meaning assigned to such term in Section 2.10(c)(iii).

“**Foreign Lender**” shall mean any Lender that is not a United States person under and as defined in Section 7701(a)(30) of the Code.

“**Foreign Subsidiary**” shall mean a Subsidiary that is (i) organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia or (ii) a direct or indirect Subsidiary of a Subsidiary described in clause (i).

“**Fronting Fee**” shall have the meaning assigned to such term in Section 2.05(c).

“**Fund**” shall mean any 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 of its business.

“**Funding Guarantor**” shall have the meaning assigned to such term in Section 7.10.

“**GAAP**” shall mean generally accepted accounting principles in the United States applied on a consistent basis.

“**Governmental Authority**” shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union, the European Central Bank or the Organisation for Economic Co-operation and Development).

“**Governmental Real Property Disclosure Requirements**” shall mean any Requirements of Law of any Governmental Authority requiring notification of the buyer, lessee, mortgagee, assignee or other transferee of any Real Property, facility, establishment or business, or notification, registration or filing to or with any Governmental Authority, in connection with the sale, lease, mortgage, assignment or other transfer (including any transfer of control) of any Real Property, facility, establishment or business, of the actual or threatened presence or Release in or into the Environment, or the use, disposal or handling of Hazardous Material on, at, under or near the Real Property, facility, establishment or business to be sold, leased, mortgaged, assigned or transferred.

“**Guaranteed Obligations**” shall have the meaning assigned to such term in Section 7.01.

“**Guarantees**” shall mean the guarantees issued pursuant to Article VII by the Subsidiary Guarantors.

“**Guarantor Obligations**” shall have the meaning assigned to such term in Section 7.08(a).

“**Guarantors**” shall mean the Subsidiary Guarantors.

**“Hazardous Materials”** shall mean the following: hazardous substances; hazardous wastes; polychlorinated biphenyls (“PCBs”) or any substance or compound containing PCBs; asbestos or any asbestos-containing materials in any form or condition; radon or any other radioactive materials including any source, special nuclear or by-product material; petroleum, crude oil or any fraction thereof; and any other pollutant or contaminant or chemicals, wastes, materials, compounds, constituents or substances, subject to regulation or which can give rise to liability under any Environmental Laws.

**“Hedging Agreement”** shall mean any swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates, currency exchange rates or commodity prices, either generally or under specific contingencies.

**“Hedging Obligations”** shall mean obligations under or with respect to Hedging Agreements.

**“Immaterial Subsidiaries”** shall mean, as of any date, any Subsidiary designated as such by the Borrower (i) whose total assets, as of that date, are less than \$1.0 million and whose total assets, as of that date and together with the total assets of all other Immaterial Subsidiaries as of such date, are less than \$5.0 million and (ii) whose total revenues for the most recent 12-month period do not exceed \$1.0 million and whose total revenues for the most recent 12-month period, together with the total revenues for the most recent 12-month period for all other Immaterial Subsidiaries, do not exceed \$5.0 million; *provided*, however, that a Subsidiary will not be considered to be an Immaterial Subsidiary if it, directly or indirectly, Guarantees or otherwise provides direct credit support for any Indebtedness of any Loan Party.

**“Increase Effective Date”** shall have the meaning assigned to such term in Section 2.20(a).

**“Increase Joinder”** shall have the meaning assigned to such term in Section 2.20(c).

**“Incremental Term Loan”** shall have the meaning assigned to such term in Section 2.20(a).

**“Incremental Term Loan Commitment”** shall have the meaning assigned to such term in Section 2.20(a). Each Incremental Term Loan shall be either an ABR Term Loan or a Eurodollar Term Loan.

**“Incremental Term Loan Maturity Date”** shall have the meaning assigned to such term in Section 2.20(c)(iv).

**“Indebtedness”** of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or advances; (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such person upon which interest charges are customarily paid or accrued; (d) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person; (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding (i) trade accounts payable and accrued obligations incurred in the ordinary course of business on normal trade terms, (ii) deferred compensation owed by the Acquired Business and its Subsidiaries to the extent arising or incurred prior to the Closing Date and (iii) earnouts, escrows, holdbacks and similar deferred payment obligations so long as they are

contingent or not yet fixed); (f) all obligations of others of the kind referred to in the foregoing clauses (a) through (e) and the following clauses (g) through (j) secured by any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property; (g) all Capital Lease Obligations, Purchase Money Obligations and synthetic lease obligations of such person; (h) all Hedging Obligations to the extent required to be reflected as a liability on a balance sheet of such person; (i) all Attributable Indebtedness of such person; (j) all obligations of such person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers' acceptances and similar credit transactions; and (k) all Contingent Obligations of such person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (j) above. The Indebtedness of any person shall include the Indebtedness of any other entity (including any partnership in which such person is a general partner) to the extent such person is liable therefor as a result of such person's ownership interest in or other relationship with such entity, but only to the extent there is recourse to such Person for payment thereof. Notwithstanding any provision herein to the contrary, Indebtedness shall be determined without giving effect to any OID or upfront fees (which shall be deemed to constitute like amounts of OID) (without in any way limiting the provisions of Section 2.20(c)(v)).

**"Indemnified Taxes"** shall mean all Taxes other than Excluded Taxes.

**"Indemnitee"** shall have the meaning assigned to such term in Section 10.03(b).

**"Information"** shall have the meaning assigned to such term in Section 10.12.

**"Insurance Policies"** shall mean the insurance policies and coverages required to be maintained by each Loan Party which is an owner of Mortgaged Property with respect to the applicable Mortgaged Property pursuant to Section 5.04 and all renewals and extensions thereof.

**"Insurance Requirements"** shall mean, collectively, all provisions of the Insurance Policies, all requirements of the issuer of any of the Insurance Policies and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon each Loan Party which is an owner of Mortgaged Property and applicable to the Mortgaged Property or any use or condition thereof.

**"Intellectual Property"** shall have the meaning assigned to such term in Section 3.06(a).

**"Intercompany Note"** shall mean a promissory note substantially in the form of Exhibit P.

**"Interest Election Request"** shall mean a request by Borrower to convert or continue a Revolving Borrowing or Term Borrowing in accordance with Section 2.08(b), substantially in the form of Exhibit E.

**"Interest Payment Date"** shall mean (a) with respect to any ABR Loan (including Swingline Loans), the last Business Day of each March, June, September and December to occur during any period in which such Loan is outstanding, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Loan with an Interest Period of more than three months' duration,

each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period, (c) with respect to any Revolving Loan or Swingline Loan, the Revolving Maturity Date or such earlier date on which the Revolving Commitments are terminated and (d) with respect to any Term Loan, the Term Loan Maturity Date or an Incremental Term Loan Maturity Date, as the case may be.

**"Interest Period"** shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or nine or twelve months if agreed to by all affected Lenders) thereafter, as Borrower may elect; *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing; *provided, however*, that an Interest Period shall be limited to the extent required under Section 2.03(e).

**"Internally Generated Cash"** shall mean any cash of the Borrower or any Subsidiary that is not generated from an Asset Sale, a Casualty Event, an incurrence of Indebtedness, an issuance of Equity Interests or a capital contribution.

**"Investments"** shall have the meaning assigned to such term in Section 6.04.

**"Issuing Bank"** shall mean, as the context may require, (a) UBS AG, Stamford Branch, in its capacity as issuer of Letters of Credit issued by it; (b) Bank of America, N.A., in its capacity as issuer of the Existing Letters of Credit; (c) any other Lender that may become an Issuing Bank pursuant to Sections 2.18(j) and (k) in its capacity as issuer of Letters of Credit issued by such Lender; or (d) collectively, all of the foregoing.

**"Joinder Agreement"** shall mean a joinder agreement substantially in the form of Exhibit F.

**"Labarge SEC Action"** shall mean that certain formal investigation that the SEC commenced of the Acquired Business in June, 2009, relating to the internal controls of the Acquired Business regarding its use of estimates of completion costs for certain long-term production contracts.

**"Landlord Access Agreement"** shall mean a Landlord Access Agreement, substantially in the form of Exhibit G, or such other form as may reasonably be acceptable to the Administrative Agent.

**"LC Commitment"** shall mean the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.18. The amount of the LC Commitment shall initially be \$10.0 million, but in no event exceed the Revolving Commitment.



**“LC Disbursement”** shall mean a payment or disbursement made by the Issuing Bank pursuant to a drawing under a Letter of Credit.

**“LC Exposure”** shall mean at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate principal amount of all Reimbursement Obligations outstanding at such time. The LC Exposure of any Revolving Lender at any time shall mean its Pro Rata Percentage of the aggregate LC Exposure at such time.

**“LC Participation Fee”** shall have the meaning assigned to such term in Section 2.05(c).

**“LC Request”** shall mean a request by Borrower in accordance with the terms of Section 2.18(b) and substantially in the form of Exhibit H, or such other form as shall be approved by the Administrative Agent.

**“Leases”** shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

**“Lender Addendum”** shall mean with respect to any Lender on the Closing Date, a lender addendum in the form of Exhibit I, to be executed and delivered by such Lender on the Closing Date as provided in Section 10.15.

**“Lender Participation Notice”** shall have the meaning assigned to such term in Section 2.21(c).

**“Lenders”** shall mean (a) the financial institutions that have become a party hereto pursuant to a Lender Addendum or Increase Joinder and (b) any financial institution that has become a party hereto pursuant to an Assignment and Assumption, other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Assumption. Unless the context clearly indicates otherwise, the term “Lenders” shall include the Swingline Lender.

**“Letter of Credit”** shall mean any (i) Standby Letter of Credit and (ii) Commercial Letter of Credit, in each case, issued or to be issued by an Issuing Bank for the account of Borrower pursuant to Section 2.18.

**“Letter of Credit Expiration Date”** shall mean the date which is five Business Days prior to the Revolving Maturity Date.

**“LIBOR Rate”** shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent to be the arithmetic mean of the offered rates for deposits in dollars with a term comparable to such Interest Period that appears on the Telerate British Bankers Assoc. Interest Settlement Rates Page (as defined below) at approximately 11:00 a.m., London, England time, on the second full London Business Day preceding the first day of such Interest Period; *provided, however*, that (i) if no comparable term

for an Interest Period is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period and (ii) if there shall at any time no longer exist a Telerate British Bankers Assoc. Interest Settlement Rates Page, "LIBOR Rate" shall mean, with respect to each day during each Interest Period pertaining to Eurodollar Borrowings comprising part of the same Borrowing, the rate per annum equal to the rate at which the Administrative Agent is offered deposits in dollars at approximately 11:00 a.m., London, England time, two London Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to its portion of the amount of such Eurodollar Borrowing to be outstanding during such Interest Period. Notwithstanding the foregoing, for purposes of clause (c) of the definition of Alternate Base Rate, the rates referred to above shall be the rates as of 11:00 a.m., London, England time, on the date of determination (rather than the second London Business Day preceding the date of determination). "**Telerate British Bankers Assoc. Interest Settlement Rates Page**" shall mean the display designated as Reuters Screen LIBOR01 Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which dollar deposits are offered by leading banks in the London interbank deposit market).

"**Lien**" shall mean, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind or any arrangement to provide priority or preference or any filing of any financing statement under the UCC or any other similar notice of lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Loan Documents**" shall mean this Agreement, the Letters of Credit, the Notes (if any), the Intercompany Note, and the Security Documents and, solely for purposes of paragraph (e) of Section 8.01, the Fee Letter.

"**Loan Parties**" shall mean Borrower and the Subsidiary Guarantors.

"**Loans**" shall mean, as the context may require, a Revolving Loan, a Term Loan or a Swingline Loan (and shall include any Loans contemplated by Section 2.20).

"**London Business Day**" shall mean any day on which banks are generally open for dealings in dollar deposits in the London interbank market.

"**Margin Stock**" shall have the meaning assigned to such term in Regulation U.

"**Material Adverse Change**" shall mean with respect to any Person, any change, effect, development or event that (a) has or would reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business, assets or results of operations of such

Person and its Subsidiaries, taken as a whole or (b) materially impairs the ability of such Person and its Subsidiaries to consummate, or prevents or materially delays, the Merger or any of the other transactions contemplated by the Acquisition Agreement or would reasonably be expected to do so; *provided, however*, that, subject to the last proviso of this sentence, in the case of clause (a) only, no changes, effects, developments or events resulting from, arising out of, or attributable to, any of the following shall be deemed to be or constitute a “Material Adverse Change” or be taken into account when determining whether a “Material Adverse Change” has occurred or may, would or could occur: (A) any changes, effects, developments or events in the economy or the financial, credit or securities markets in general (including changes in interest or exchange rates), (B) any changes, effects, developments or events in the industries in which such Person and its Subsidiaries operate, (C) any changes, effects, developments or events resulting from the announcement or pendency of the transactions contemplated by the Acquisition Agreement, the identity of the Borrower or the performance or compliance with the terms of the Acquisition Agreement (including, in each case, any loss of customers, suppliers or employees or any disruption in business relationships), (D) any failure, in and of itself, of such Person to meet internal forecasts, budgets or financial projections or fluctuations, in and of themselves, in the trading price or volume of such Person’s common stock (it being understood that the facts, event, circumstances or occurrences giving rise or contributing to such failure or fluctuations may be deemed to be, constitute, or be taken into account when determining the occurrence of, a Material Adverse Change), (E) acts of God, natural disasters, calamities, national or international political or social conditions, including the engagement by any country in hostility (whether commenced before, on or after the date of the Acquisition Agreement, and whether or not pursuant to the declaration of a national emergency or war), or the occurrence of a military or terrorist attack, or (F) any changes in Applicable Law or GAAP (or any interpretation thereof); *provided further, however*, that, with respect to clauses (A), (B), (E), and (F), the impact of such changes, effects, developments or events is not materially and disproportionately adverse to such Person and its Subsidiaries. As used solely with respect to this definition, (i) “Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof; (ii) “Subsidiary” means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at any time directly or indirectly owned by such Person; (iii) “Applicable Law” means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, its Subsidiaries or any of their respective assets, as the same may be amended from time to time unless expressly specified otherwise in the Acquisition Agreement; (iv) “GAAP” means United States generally accepted accounting principles consistently applied; and (v) “Governmental Authority” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency, commission or official, including any political subdivision thereof, or any non-governmental self-regulatory agency, commission or authority.

“**Material Adverse Effect**” shall mean (a) a material adverse effect on the business, property, results of operations or financial condition of Borrower and its Subsidiaries, taken as a whole; (b) material impairment of the ability of the Loan Parties to fully and timely perform any

of their material obligations under any Loan Document; (c) material impairment of the rights of or benefits or remedies available to the Lenders or the Collateral Agent under any Loan Document; or (d) a material adverse effect on the Collateral or the Liens in favor of the Collateral Agent (for its benefit and for the benefit of the other Secured Parties) on the Collateral or the priority of such Liens.

“**Material Indebtedness**” shall mean any Indebtedness (other than the Loans and Letters of Credit) of Borrower or any of its Subsidiaries in an aggregate outstanding principal amount exceeding \$10.0 million. For purposes of determining Material Indebtedness, the “principal amount” in respect of any Hedging Obligations of any Loan Party at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party would be required to pay if the related Hedging Agreement were terminated at such time.

“**Material Subsidiary**” means any Subsidiary that is not an Immaterial Subsidiary.

“**Maximum Available Net Assets**” shall have the meaning assigned to such term in Section 7.10.

“**Maximum Rate**” shall have the meaning assigned to such term in Section 10.14.

“**Merger**” shall have the meaning assigned to such term in the first recital hereto.

“**Merger Subsidiary**” shall have the meaning assigned to such term in the first recital hereto.

“**MNPI**” shall have the meaning assigned to such term in Section 10.01(d).

“**Mortgage**” shall mean an agreement, including, but not limited to, a mortgage, deed of trust or any other document, creating and evidencing a Lien on a Mortgaged Property, which shall be substantially in the form of Exhibit J or other form reasonably satisfactory to the Collateral Agent, in each case, with such schedules and including such provisions as shall be necessary to conform such document to applicable local or foreign law or as shall be customary under applicable local or foreign law.

“**Mortgaged Property**” shall mean (a) each Real Property identified as a Mortgaged Property on Schedule 7(a) to the Perfection Certificate dated the Closing Date and (b) each Real Property, if any, which shall be subject to a Mortgage delivered after the Closing Date pursuant to Section 5.11(c).

“**Multiemployer Plan**” shall mean a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which any Company or any ERISA Affiliate is then making or accruing an obligation to make contributions; (b) to which any Company or any ERISA Affiliate has within the preceding five plan years made contributions; or (c) with respect to which any Company could incur liability.

**“Net Cash Proceeds”** shall mean:

(a) with respect to any Asset Sale (other than any issuance or sale of Equity Interests), the cash proceeds received by Borrower or any of its Subsidiaries (including cash proceeds subsequently received (as and when received by Borrower or any of its Subsidiaries) in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers’ fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and Borrower’s good faith estimate of income taxes actually paid or payable in connection with such sale); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Asset Sale or (y) any other liabilities retained by Borrower or any of its Subsidiaries associated with the properties sold in such Asset Sale (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); (iii) Borrower’s good faith estimate of payments required to be made with respect to unassumed liabilities relating to the properties sold within 180 days of such Asset Sale (*provided* that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 180 days of such Asset Sale, such cash proceeds shall then constitute Net Cash Proceeds); (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties); and (v) in the case of any such cash proceeds received (or subsequently received) by any Subsidiary that is not a Wholly-Owned Subsidiary, the portion of such proceeds allocable to the holders (other than Borrower and its Subsidiaries) of Equity Interests in such Subsidiary or any intermediate Subsidiary that is not a Wholly-Owned Subsidiary;

(b) with respect to any Debt Issuance or any Preferred Stock Issuance by Borrower or any of its Subsidiaries, the cash proceeds thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith; and

(c) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof, net of (i) all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event; (ii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness and which is secured by a Lien on the property subject to such Casualty Event (so long as such Lien was permitted to encumber such property under the Loan Documents at the time of such Casualty Event) and which is repaid with such cash proceeds, awards or other compensation; and (iii) in the case of any such cash proceeds, awards or other compensation received by any Subsidiary that is not a Wholly-Owned Subsidiary, the portion of such proceeds allocable to the holders (other than Borrower and its Subsidiaries) of Equity Interests in such Subsidiary or any intermediate Subsidiary that is not a Wholly-Owned Subsidiary.

**“Net Working Capital”** shall mean, at any time, Consolidated Current Assets at such time minus Consolidated Current Liabilities at such time.

“**Notes**” shall mean any notes evidencing the Term Loans, Revolving Loans or Swingline Loans issued pursuant to this Agreement, if any, substantially in the form of Exhibit K-1, K-2 or K-3.

“**Obligations**” shall mean (a) obligations of Borrower and the other Loan Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by Borrower and the other Loan Parties under this Agreement in respect of any Letter of Credit, when and as due, including payments in respect of Reimbursement Obligations, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of Borrower and the other Loan Parties under this Agreement and the other Loan Documents, and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of Borrower and the other Loan Parties under or pursuant to this Agreement and the other Loan Documents.

“**OFAC**” shall have the meaning set forth in the definition of “**Embargoed Person**.”

“**Offered Loans**” shall have the meaning assigned to such term in Section 2.21(c).

“**Officers’ Certificate**” shall mean a certificate executed by the chairman of the Board of Directors (if an officer), the chief executive officer, the president or one of the Financial Officers, solely in his or her official capacity as an officer (and not in his or her individual capacity).

“**OID**” shall have the meaning assigned to such term in Section 2.20(c)(v).

“**Organizational Documents**” shall mean, with respect to any person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such person and (v) in any other case, the functional equivalent of the foregoing.

“**Other Taxes**” shall mean all present or future stamp or documentary Taxes or any other excise, property or similar Taxes, charges or 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 (and any interest, additions to Tax or penalties applicable thereto).

“**Participant**” shall have the meaning assigned to such term in Section 10.04(d).

“**Participant Register**” shall have the meaning assigned to such term in Section 10.04(d).

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“**Perfection Certificate**” shall mean a certificate in the form of Exhibit L-1 or any other form approved by the Collateral Agent, as the same shall be supplemented from time to time by a Perfection Certificate Supplement or otherwise.

“**Perfection Certificate Supplement**” shall mean a certificate supplement in the form of Exhibit L-2 or any other form approved by the Collateral Agent.

“**Permitted Acquisition**” shall mean any transaction for the (a) acquisition of all or substantially all of the property of any person, or of any business or division of any person; or (b) acquisition (including by merger or consolidation) of the Equity Interests of any person that becomes a Subsidiary after giving effect such transaction; provided that each of the following conditions shall be met:

(i) no Default then exists or would result therefrom;

(ii) after giving effect to such transaction on a Pro Forma Basis, (A) if (i) the sum of (a) any Revolving Borrowings plus (b) the amount drawn under any Letter of Credit exceeds \$1.0 million; or (ii) the aggregate amount of outstanding Letters of Credit exceeds \$5.0 million, the Borrower shall be in compliance (after giving effect to such transaction on a Pro Forma Basis, including any Indebtedness assumed or incurred in connection with such transaction) with the covenant set forth in Section 6.09(a) and (B) the Borrower would be in compliance with the covenant set forth in Section 6.09(c), assuming in the case of both (A) and (B) above that such transaction, and all other Permitted Acquisitions consummated since the first day of the relevant Test Period ending on or prior to the date of such transaction during such Test Period, had occurred on the first day of such relevant Test Period;

(iii) no Company shall, in connection with any such transaction, assume or remain liable with respect to any Indebtedness of the related seller or the business, person or properties acquired, except to the extent permitted under Section 6.01;

(iv) the person or business to be acquired shall be, or shall be engaged in, a business of the type that Borrower and the Subsidiaries are permitted to be engaged in under Section 6.14 and the property acquired in connection with any such transaction shall be made subject to the Lien of the Security Documents (to the extent constituting Collateral thereunder) and shall be free and clear of any Liens, other than Permitted Collateral Liens;

(v) the Board of Directors of the person to be acquired shall not have indicated publicly its opposition to the consummation of such acquisition (which opposition has not been publicly withdrawn);

(vi) all transactions in connection therewith shall be consummated in accordance in all material respects with all applicable Requirements of Law;

(vii) with respect to any transaction involving Acquisition Consideration of more than \$15.0 million, unless the Administrative Agent shall otherwise agree, Borrower shall have provided the Administrative Agent and the Lenders with (A) historical financial statements for the last three fiscal years (or, if less, the number of years since formation) of the person or business to be acquired (audited if available without undue cost or delay) and unaudited financial statements thereof for the most recent interim period which are available, (B) reasonably detailed projections for the succeeding five years pertaining to the person or business to be acquired and updated projections for Borrower after giving effect to such transaction and (C) all such information and data relating to such transaction or the person or business to be acquired as may be reasonably requested by the Administrative Agent or the Required Lenders;

(viii) with respect to any transaction involving Acquisition Consideration of more than \$15.0 million, at least 5 Business Days prior to the proposed date of consummation of the transaction, Borrower shall have delivered to the Administrative Agent an Officers' Certificate certifying that (A) such transaction complies with this definition (which shall have attached thereto reasonably detailed backup data and calculations showing such compliance), and (B) such transaction could not reasonably be expected to result in a Material Adverse Effect; and

(ix) after giving effect to such transaction on a Pro Forma Basis (including any Indebtedness assumed or incurred in connection with such transaction), the Total Leverage Ratio of the Borrower shall be less than 4.25 to 1.0 (assuming that such transaction, and all other Permitted Acquisitions consummated since the first day of the relevant Test Period ending on or prior to the date of such transaction during such Test Period, had occurred on the first day of such relevant Test Period); *provided* that, subject to the foregoing limitations, the aggregate amount of the Acquisition Consideration for all Permitted Acquisitions since the Closing Date in respect of the acquisition of Subsidiaries that do not become Subsidiary Guarantors pursuant to Section 5.11 may not exceed \$10.0 million; *provided further* that, in each case, any Equity Interests constituting all or a portion of Acquisition Consideration shall not have a cash dividend requirement on or prior to the Final Maturity Date.

**"Permitted Collateral Liens"** shall mean (a) in the case of Collateral other than Mortgaged Property, Permitted Liens and (b) in the case of Mortgaged Property, the Liens described in clauses (a), (b), (d), (e), (g), (i) and (l) of Section 6.02 in addition to those Liens set forth in Schedule B to the applicable Mortgage delivered on the Closing Date or upon the date of delivery of each additional Mortgage under Section 5.11, 5.12 or 5.14.

**"Permitted Liens"** shall have the meaning assigned to such term in Section 6.02.

**"Permitted Refinancing Indebtedness"** shall mean, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person (or any successor of such Person); *provided*, however, that (a) the principal amount thereof does not exceed the sum of (i) the outstanding principal amount of the Indebtedness so modified, refinanced, refunded, renewed or extended plus (ii) prepayment premiums paid, and reasonable and customary fees and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension, (b) such modification, refinancing, refunding, renewal or



extension has (i) a final maturity date equal to or later than the final maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended and (ii) a weighted average life to maturity equal to or longer than the weighted average life to maturity of the Indebtedness being modified, refinanced, refunded, renewed or extended, (c) the direct and contingent obligors of such Indebtedness shall not be changed, as a result of or in connection with such modification, refinancing, refunding, renewal or extension, (d) the terms of such Indebtedness shall not be changed in any manner that is materially adverse, taken as a whole, to the Borrower or any Subsidiary, as applicable, as a result of or in connection with such modification, refinancing, refunding, renewal or extension, (e) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment and/or in right of Lien to the Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment and/or in right of Lien (or, in the case of Lien subordination, not secured) to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being so modified, refinanced, refunded, renewed or extended, (f) if the Indebtedness being modified, refinanced, refunded, renewed or extended is unsecured, such modification, refinancing, refunding, renewal or extension shall be unsecured and (g) at the time of such modification, refinancing, refunding, renewal or extension of such Indebtedness, no Default shall have occurred and be continuing or result therefrom.

**“Permitted Subordinated Indebtedness”** shall mean unsecured Subordinated Indebtedness the sole obligor of which is Borrower that (i) will not mature prior to the 91st day following the Final Maturity Date, (ii) has no scheduled amortization of principal or required or mandatory redemptions, or repurchases, sinking fund obligation or payments of principal prior to the 91st day following the Final Maturity Date (other than customary offers to repurchase upon a change of control, asset sale or condemnation event so long as any such rights are subordinated to the rights of the Lenders), (iii) is contractually subordinated or junior in right of payment (including as to “standstill” provisions) to the Obligations on terms reasonably satisfactory to the Administrative Agent and (iv) contains covenants, events of default and other material terms that are no less favorable to the Lenders than the terms and conditions customary for senior subordinated debt securities of comparable issuers issued in the capital markets at such time as reasonably determined by the Administrative Agent; *provided*, for the avoidance of doubt that any such Indebtedness may be guaranteed by any Guarantor hereunder to the extent permitted by Section 6.01.

**“person”** shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**“Plan”** shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA which is maintained or contributed to by any Company or its ERISA Affiliate or with respect to which any Company could incur liability (including under Section 4069 of ERISA).

**“Preferred Stock”** shall mean, with respect to any person, any and all preferred or preference Equity Interests (however designated) of such person whether now outstanding or issued after the Closing Date.

“**Preferred Stock Issuance**” shall mean the issuance or sale by Borrower or any of its Subsidiaries of any Preferred Stock after the Closing Date (other than as permitted by Section 6.01).

“**Premises**” shall have the meaning assigned thereto in the applicable Mortgage.

“**Private Side Communications**” shall have the meaning assigned to such term in Section 10.01(d).

“**Private Siders**” shall have the meaning assigned to such term in Section 10.01(d).

“**Pro Forma Basis**” shall mean on a basis in accordance with GAAP and Regulation S-X and otherwise reasonably satisfactory to the Administrative Agent, *provided* that calculations of Consolidated EBITDA may include Pro Forma Cost Savings (if applicable) to the extent permitted by the definition thereof and as set forth in the last paragraph of the definition of “**Consolidated EBITDA**”.

“**Pro Forma Cost Savings**” shall mean, with respect to any period, the reduction in net costs and related adjustments (which may include cost savings resulting from head count reduction, closure of facilities and similar restructurings): (a) that were directly attributable to the Merger, any Permitted Acquisition or an Asset Sale that occurred during the relevant Test Period and are calculated on a basis that is consistent with Regulation S-X, (b) that were actually implemented in connection with the Merger, any Permitted Acquisition or an Asset Sale during the relevant Test Period and are supportable and quantifiable by the underlying accounting records or (c) that relate to the Merger, any Permitted Acquisition or an Asset Sale that has occurred and that a Financial Officer of the Borrower reasonably determines in good faith are probable based upon specifically identifiable actions to be taken within 12 months of the date of consummation of the Merger, a Permitted Acquisition or an Asset Sale and such costs and related adjustments are identifiable, quantifiable and factually supportable and reasonably satisfactory to the Administrative Agent; *provided* that (1) the only cost savings added in the calculation of Consolidated EBITDA pursuant to this definition in respect of the Transactions shall be the deemed amount of such cost savings equal to \$4.4 million (for the Test Period ended July 2, 2011), \$4.4 million (for the Test Period ended October 1, 2011), \$3.3 million (for the Test Period ended December 31, 2011), \$2.2 million (for the Test Period ended March 31, 2012), and \$1.1 million (for the Test Period ended June 30, 2012), (2) the aggregate amount of cost savings added in the calculation of Consolidated EBITDA pursuant to this definition shall not exceed \$2.5 million in the aggregate for any one Permitted Acquisition and \$5.0 million in the aggregate for any fiscal year and no amount shall be carried forward to any succeeding fiscal year, (3) in the case of clause (c)(2) a duly completed certificate (the “**Cost Savings Certificate**”) signed by a Financial Officer of the Borrower shall have been delivered to the Administrative Agent, specifying the relevant transaction and the expected reduction in net costs and related adjustments in reasonable detail and certifying that (i) such reduction in net costs and related adjustments is probable based upon the actions specifically identified in such certificate, (ii) such actions are to be taken within (A) in the case of any reduction in net costs and related adjustments in connection with the Transactions, 12 months after the Closing Date and (B) in all other cases, within 12 months after the consummation of the applicable Permitted Acquisition or Asset Sale, (4) no reduction in net costs and related adjustments shall be added pursuant to this

definition to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period, or of the actual costs savings realized, (5) reductions in net costs and related adjustments may no longer be added in calculating Consolidated EBITDA pursuant to this definition for periods commencing more than 12 months after the applicable transaction and (6) for each Test Period after the first Test Period for which cost savings for any Permitted Acquisition or an Asset Sale are reflected (other than those with respect to the Transactions which are addressed in clause (1) above), the amount of reduction in net costs and related adjustments to be included in the calculation of Consolidated EBITDA with respect to such transaction for such period shall be reduced by 25% in the case of such Test Period immediately following the first Test Period for which cost savings for such transaction are reflected, and an additional 25% in the case of each of such other Test Periods, of the total amount of such reduction in net costs and related adjustments in respect thereof (in the case of clause (c) as specified in the Cost Savings Certificate).

**“Proposed Discounted Prepayment Amount”** shall have the meaning assigned to such term in Section 2.21(b).

**“Pro Rata Percentage”** of any Revolving Lender at any time shall mean the percentage of the total Revolving Commitments of all Revolving Lenders represented by such Lender’s Revolving Commitment; *provided* that for purposes of Section 2.19(b) and (c), “Pro Rata Percentage” shall mean the percentage of the total Revolving Commitments (disregarding the Revolving Commitment of any Defaulting Lender to the extent its Swingline Exposure or LC Exposure is reallocated to the non-Defaulting Lenders) represented by such Lender’s Revolving Commitment. If the Revolving Commitments have terminated or expired, the Pro Rata Percentage shall be determined based upon the Revolving Commitments most recently in effect, after giving effect to any assignments.

**“property”** shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any person and whether now in existence or owned or hereafter entered into or acquired, including all Real Property.

**“Property Material Adverse Effect”** shall have the meaning assigned thereto in the Mortgage.

**“Public Siders”** shall have the meaning assigned to such term in Section 10.01(d).

**“Purchase Money Obligation”** shall mean, for any person, the obligations of such person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any person) or the cost of installation, construction or improvement of any property and any refinancing thereof; *provided, however*, that (i) such Indebtedness is incurred within one year after such acquisition, installation, construction or improvement of such property by such person and (ii) the amount of such Indebtedness does not exceed 100% of the cost of such acquisition, installation, construction or improvement, as the case may be.

“**Qualified Capital Stock**” of any person shall mean any Equity Interests of such person that are not Disqualified Capital Stock.

“**Qualifying Lenders**” shall have the meaning assigned to such term in Section 2.21(d).

“**Qualifying Loans**” shall have the meaning assigned to such term in Section 2.21(d).

“**Qui Tam Action**” means the qui tam action brought against The Boeing Company and the Borrower on behalf of the United States of America for alleged violations of the United States False Claims Act in United States of America ex re Taylor Smith, Jeannine Prewitt and James Ailes v. The Boeing Company and Ducommun Inc.

“**Real Property**” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“**Refinancing**” shall mean the repayment in full and the termination of any commitment to make extensions of credit under all of the outstanding indebtedness listed on Schedule 1.01(a) of Borrower or any of its Subsidiaries and the Acquired Business and its Subsidiaries.

“**Register**” shall have the meaning assigned to such term in Section 10.04(c).

“**Regulation D**” shall mean Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation S-X**” shall mean Regulation S-X promulgated under the Securities Act.

“**Regulation T**” shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Reimbursement Obligations**” shall mean Borrower’s obligations under Section 2.18(e) to reimburse LC Disbursements.

“**Related Parties**” shall mean, with respect to any person, such person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such person and of such person’s Affiliates.

“**Release**” shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the Environment.

“**Remaining Loan Party**” shall have the meaning assigned to such term in Section 7.10.

“**Repricing Transaction**” shall mean the refinancing or repricing by Borrower of any of the Term Loans under this Agreement (x) with the proceeds of any Indebtedness (including, without limitation, any new or additional term loans under this Agreement) or (y) in connection with any amendment to this Agreement, in either case, (i) having or resulting in an effective interest rate or weighted average yield (to be determined at the sole discretion of the Administrative Agent, after giving effect to margins, upfront or similar fees or original issue discount shared with all lenders or holders thereof, but excluding the effect of any arrangement, structuring, syndication or other fees payable in connection therewith that are not shared with all lenders or holders thereof) as of the date of such refinancing that is, or could be by the express terms of such Indebtedness (and not by virtue of any fluctuation in Adjusted LIBOR Rate or Alternate Base Rate, but including by virtue of any LIBOR floor or Alternate Base Rate floor), less than the Applicable Margin for, or weighted average yield of (to be determined at the sole discretion of the Administrative Agent, on the same basis as above) such Term Loans as of the date of such repricing and (ii) in the case of a refinancing of the applicable Term Loans, the proceeds of which are used to repay, in whole or in part, principal of such outstanding Term Loans.

“**Required Class Lenders**” shall mean (i) with respect to each Class of Term Loans, Lenders having more than 50% of all Term Loans of such Class outstanding and (ii) with respect to Revolving Loans, Required Revolving Lenders.

“**Required Lenders**” shall mean Lenders having more than 50% of the sum of all Loans outstanding, LC Exposure and unused Commitments; *provided* that the Loans, LC Exposure and unused Commitments held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“**Required Revolving Lenders**” shall mean Lenders having more than 50% of all Revolving Commitments or, after the Revolving Commitments have terminated, more than 50% of all Revolving Exposure; *provided* that the Revolving Commitments held or deemed held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

“**Requirements of Law**” shall mean, collectively, any and all applicable requirements of any Governmental Authority including any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes or case law.

“**Response**” shall mean (a) “response” as such term is defined in CERCLA, 42 U.S.C. § 9601(24), and (b) all other actions required by any Governmental Authority or voluntarily undertaken to (i) clean up, remove, treat, abate or in any other way address any Hazardous Material in the Environment; (ii) prevent the Release or threat of Release, or minimize the further Release, of any Hazardous Material; or (iii) perform studies and investigations in connection with, or as a precondition to, or to determine the necessity of the activities described in, clause (i) or (ii) above.

**“Responsible Officer”** of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof with responsibility for the administration of the obligations of such person in respect of this Agreement.

**“Revolving Availability Period”** shall mean the period from and including the Closing Date to but excluding the earlier of (i) the Business Day preceding the Revolving Maturity Date and (ii) the date of termination of the Revolving Commitments.

**“Revolving Borrowing”** shall mean a Borrowing comprised of Revolving Loans.

**“Revolving Commitment”** shall mean, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans hereunder up to the amount set forth on Schedule I to the Lender Addendum executed and delivered by such Lender or by an Increase Joinder, or in the Assignment and Assumption pursuant to which such Lender assumed its Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The aggregate amount of the Lenders’ Revolving Commitments on the Closing Date is \$60.0 million.

**“Revolving Exposure”** shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender’s LC Exposure, *plus* the aggregate amount at such time of such Lender’s Swingline Exposure.

**“Revolving Lender”** shall mean a Lender with a Revolving Commitment.

**“Revolving Loan”** shall mean a Loan made by the Lenders to Borrower pursuant to Section 2.01(b). Each Revolving Loan shall either be an ABR Revolving Loan or a Eurodollar Revolving Loan.

**“Revolving Maturity Date”** shall mean the date that is the five year anniversary of the Closing Date or, if such date is not a Business Day, the first Business Day thereafter.

**“Sale and Leaseback Transaction”** has the meaning assigned to such term in Section 6.03.

**“Sarbanes-Oxley Act”** shall mean the United States Sarbanes-Oxley Act of 2002, as amended, and all rules and regulations promulgated thereunder.

**“SEC”** has the meaning assigned to such term in Section 10.01(d).

**“Secured Obligations”** shall mean (a) the Obligations, (b) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties under each Hedging Agreement entered into with any counterparty that is a Secured Party and (c) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties (including overdrafts and related liabilities) under each Treasury Services Agreement entered into with any counterparty that is a Secured Party.

**“Secured Parties”** shall mean, collectively, the Administrative Agent, the Collateral Agent, each other Agent, each Issuing Bank, the Lenders and each counterparty to a Hedging Agreement or Treasury Services Agreement if (a) at the date of entering into such Hedging Agreement or Treasury Services Agreement such person was an Agent or a Lender or an Affiliate of an Agent or a Lender and (b) such person executes and delivers to the Administrative Agent a letter agreement in form and substance acceptable to the Administrative Agent pursuant to which such person (i) appoints the Collateral Agent as its agent under the applicable Loan Documents and (ii) agrees to be bound by the provisions of Sections 9.03, 10.03 and 10.09 as if it were a Lender.

**“Securities Act”** shall mean the Securities Act of 1933, as amended.

**“Securities Collateral”** shall have the meaning assigned to such term in the Security Agreement.

**“Security Agreement”** shall mean that certain Security Agreement dated as of the Closing Date among the Loan Parties and the Collateral Agent for the benefit of the Secured Parties, as amended from time to time pursuant to the terms hereof and thereof.

**“Security Agreement Collateral”** shall mean all property pledged or granted as collateral pursuant to the Security Agreement (a) on the Closing Date or (b) thereafter pursuant to Section 5.11.

**“Security Documents”** shall mean the Security Agreement, the Mortgages and each other security document or pledge agreement delivered in accordance with applicable local or foreign law to grant a valid, perfected security interest in any property as collateral for the Secured Obligations, and all UCC or other financing statements or instruments of perfection required by this Agreement, the Security Agreement, any Mortgage or any other such security document or pledge agreement to be filed with respect to the security interests in property and fixtures created pursuant to the Security Agreement or any Mortgage and any other document or instrument utilized to pledge or grant or purport to pledge or grant a security interest or lien on any property as collateral for the Secured Obligations.

**“Senior Note Agreement”** shall mean any indenture, note purchase agreement or other agreement pursuant to which the Senior Notes are issued as in effect on the date hereof and thereafter amended from time to time subject to the requirements of this Agreement.

**“Senior Note Documents”** shall mean the Senior Notes, the Senior Note Agreement, the Senior Note Guarantees and all other documents executed and delivered with respect to the Senior Notes or the Senior Note Agreement.

**“Senior Note Guarantees”** shall mean the guarantees of Borrower and the Subsidiary Guarantors pursuant to the Senior Note Agreement.

“**Senior Notes**” shall mean Borrower’s 9.75% Senior Notes due 2018 issued pursuant to the Senior Note Agreement and any registered notes issued by Borrower in exchange for, and as contemplated by, such notes with substantially identical terms as such notes.

“**Senior Secured Leverage Ratio**” shall mean, at any date of determination, the ratio of (i) Consolidated Indebtedness that is secured by a Lien on assets of Borrower or its Subsidiaries to (ii) Consolidated EBITDA for the Test Period then most recently ended.

“**Specified Representations**” shall have the meaning assigned to such term in Section 4.01(s).

“**Standby Letter of Credit**” shall mean any standby letter of credit or similar instrument issued for the purpose of supporting (a) workers’ compensation liabilities of Borrower or any of its Subsidiaries, (b) the obligations of third-party insurers of Borrower or any of its Subsidiaries arising by virtue of the laws of any jurisdiction requiring third-party insurers to obtain such letters of credit, (c) performance, payment, deposit or surety obligations of Borrower or any of its Subsidiaries if required by Requirements of Law or in accordance with custom and practice in the industry or (d) Indebtedness of Borrower or any of its Subsidiaries permitted to be incurred under Section 6.01.

“**Statutory Reserves**” shall mean for any Interest Period for any Eurodollar Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion dollars against “Eurocurrency liabilities” (as such term is used in Regulation D). Eurodollar Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under Regulation D.

“**Subordinated Indebtedness**” shall mean Indebtedness of Borrower or any Guarantor that is by its terms subordinated in right of payment to the Obligations of Borrower and such Guarantor, as applicable, on terms reasonably acceptable to the Administrative Agent.

“**Subsidiary**” shall mean, with respect to any person (the “**parent**”) at any date, (i) any person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, (ii) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent and (iii) any partnership (a) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (b) the only general partners of which are the parent and/or one or more subsidiaries of the parent. Unless the context requires otherwise, “Subsidiary” refers to a Subsidiary of Borrower.



“**Subsidiary Guarantor**” shall mean each Subsidiary listed on Schedule 1.01(b), and each other Subsidiary that is or becomes a party to this Agreement pursuant to Section 5.11.

“**Successful Syndication**” shall have the meaning assigned to such term in the Fee Letter.

“**Survey**” shall mean a survey of any Mortgaged Property (and all improvements thereon) which is (i) prepared by a surveyor or engineer licensed to perform surveys in the jurisdiction where such Mortgaged Property is located, (ii) dated subsequent to the most recent date upon which shall have occurred any exterior construction on the site of such Mortgaged Property or any easement, right of way or other interest in the Mortgaged Property has been granted or become effective through operation of law or otherwise with respect to such Mortgaged Property which, in either case, should be depicted on a survey, (iii) complying in all material respects with the minimum detail requirements of the American Land Title Association as such requirements are in effect on the date of preparation of such survey and (iv) sufficient for the Title Company to remove all standard survey exceptions from the title insurance policy (or commitment) relating to such Mortgaged Property and issue the endorsements of the type required by Section 4.01(o)(iii).

“**Swingline Commitment**” shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.17, as the same may be reduced from time to time pursuant to Section 2.07 or Section 2.17. The amount of the Swingline Commitment shall initially be \$10.0 million, but shall in no event exceed the Revolving Commitment.

“**Swingline Exposure**” shall mean at any time the aggregate principal amount at such time of all outstanding Swingline Loans. The Swingline Exposure of any Revolving Lender at any time shall equal its Pro Rata Percentage of the aggregate Swingline Exposure at such time.

“**Swingline Lender**” shall have the meaning assigned to such term in the preamble hereto.

“**Swingline Loan**” shall mean any loan made by the Swingline Lender pursuant to Section 2.17.

“**Syndication Agent**” shall have the meaning assigned to such term in the preamble hereto.

“**Tax Return**” shall mean any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Taxes**” shall mean 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.

“**Term Borrowing**” shall mean a Borrowing comprised of Term Loans.

“**Term Loan Commitment**” shall mean, with respect to each Lender, the commitment, if any, of such Lender to make a Term Loan hereunder on the Closing Date in the amount set forth on Schedule I to the Lender Addendum executed and delivered by such Lender. The aggregate amount of the Lenders’ Term Loan Commitments is \$190.0 million.

“**Term Loan Lender**” shall mean a Lender with a Term Loan Commitment or an outstanding Term Loan.

“**Term Loan Maturity Date**” shall mean the date which is the six year anniversary of the Closing Date or, if such date is not a Business Day, the first Business Day thereafter.

“**Term Loan Repayment Date**” shall have the meaning assigned to such term in Section 2.09.

“**Term Loans**” shall mean the term loans made by the Lenders to Borrower pursuant to Section 2.01(a)(i) or by an Increase Joinder. Each Term Loan shall be either an ABR Term Loan or a Eurodollar Term Loan.

A “**Test Period**” at any time shall mean the period of four consecutive fiscal quarters of Borrower ended on or prior to such time (taken as one accounting period).

“**Title Company**” shall mean any title insurance company as shall be retained by Borrower and reasonably acceptable to the Administrative Agent.

“**Title Policy**” shall have the meaning assigned to such term in Section 4.01(o)(iii).

“**Total Available Net Assets**” shall have the meaning assigned to such term in Section 7.08(a).

“**Total Leverage Ratio**” shall mean, at any date of determination, the ratio of Consolidated Indebtedness on such date to Consolidated EBITDA for the most recently ended Test Period for which financial statements are available.

“**Transaction Documents**” shall mean the Acquisition Documents, the Senior Note Documents, and the Loan Documents.

“**Transactions**” shall mean, collectively, the transactions to occur on or prior to the Closing Date pursuant to the Transaction Documents, including (a) the consummation of the Merger; (b) the execution, delivery and performance of the Loan Documents and the initial borrowings hereunder; (c) the Refinancing; (d) the execution, delivery and performance of the Senior Note Documents and the issuance of the Senior Notes; and (e) the payment of all fees and expenses to be paid on or prior to the Closing Date and owing in connection with the foregoing.

“**Transferred Guarantor**” shall have the meaning assigned to such term in Section 7.09.

“**Treasury Services Agreement**” shall mean any agreement relating to treasury, depository and cash management services or automated clearinghouse transfer of funds.

“**Type**,” when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR Rate or the Alternate Base Rate.

“**UCC**” shall mean the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

“**United States**” shall mean the United States of America.

“**USA PATRIOT Act**” shall have the meaning set forth in the definition of “**Anti- Money Laundering Laws.**”

“**Voting Stock**” shall mean, with respect to any person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to vote in the election of the Board of Directors of such person.

“**Wholly Owned Subsidiary**” shall mean, as to any person, (a) any corporation 100% of whose Equity Interests (other than directors’ qualifying shares or Equity Interests that are required to be held by another person in order to satisfy a foreign Requirement of Law prescribing an equity owner resident in the local jurisdiction) is at the time owned by such person and/or one or more Wholly Owned Subsidiaries of such person and (b) any partnership, association, joint venture, limited liability company or other entity in which such person and/or one or more Wholly Owned Subsidiaries of such person have a 100% equity interest at such time.

“**Withdrawal Liability**” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

#### **SECTION 1.02 Classification of Loans and Borrowings.**

For purposes of this Agreement, Loans may be classified and referred to by Class (*e.g.*, a “Revolving Loan”) or by Type (*e.g.*, a “Eurodollar Loan”) or by Class and Type (*e.g.*, a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (*e.g.*, a “Revolving Borrowing,” “Borrowing of Term Loans”) or by Type (*e.g.*, a “Eurodollar Borrowing”) or by Class and Type (*e.g.*, a “Eurodollar Revolving Borrowing”).

#### **SECTION 1.03 Terms Generally.**

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 (a) any definition of or reference to any Loan Document, agreement, instrument or other document herein 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 the other Loan

Documents), (b) any reference herein to any person shall be construed to include such person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time, (f) 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 and (g) "on," when used with respect to the Mortgaged Property or any property adjacent to the Mortgaged Property, means "on, in, under, above or about."

**SECTION 1.04 Accounting Terms; GAAP.**

(a) Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and all terms of an accounting or financial nature shall be construed and interpreted in accordance with GAAP, as in effect on the date hereof unless otherwise agreed to by Borrower and the Required Lenders.

(b) Notwithstanding any other provision contained herein, all terms of an accounting or financial nature shall be construed, and all computations of amounts and ratios referred to in, and determinations of compliance with the provisions of, Section 6.09 (including all relevant definitions used therein or for such purposes) hereof shall be made without giving effect to any election under FASB Accounting Standards Codification 805, 810 or 825 (or any other part of FASB Accounting Standards Codification having a similar result or effect) for all purposes hereunder, including to value any Indebtedness or other liabilities of any Loan Party or any Subsidiary of any Loan Party at "fair value" or to include any gain or loss attributable thereto in the calculation of net income (or loss) of any Loan Party or any Subsidiary of any Loan Party.

(c) Notwithstanding anything in this Agreement to the contrary, any change in GAAP that would require operating leases to be treated similarly to capital leases shall not be given effect in the definition of Indebtedness or any related definitions or in the computation of any financial ratio or requirement hereunder.

(d) Notwithstanding any other provision contained herein, in the event of any changes in GAAP or other accounting principles ("**Accounting Changes**") required by the promulgation of any rule, regulation, pronouncement or opinion of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC, if such Accounting Changes result in a change in the method of calculation of any financial covenant, ratio or requirement of this Agreement, and the Borrower shall so request in writing, then the Borrower, the Administrative Agent and the Required Lenders agree to enter into negotiations in order to amend such covenant, ratio or requirement so as to preserve the original intent thereof in light of such Accounting Changes. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, ratios and requirements of this Agreement shall continue to be calculated as if such Accounting Changes had not occurred.

**SECTION 1.05 Resolution of Drafting Ambiguities.**

Each Loan Party acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

**ARTICLE II**

**THE CREDITS**

**SECTION 2.01 Commitments.**

Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly:

(a) to make a Term Loan to Borrower on the Closing Date in the principal amount not to exceed its Term Loan Commitment; and

(b) to make Revolving Loans to Borrower, at any time and from time to time on or after the Closing Date until the earlier of the Revolving Maturity Date and the termination of the Revolving Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment; *provided however*, that the aggregate amount of Revolving Loans made on the Closing Date shall not exceed \$10.0 million.

(c) Amounts paid or prepaid in respect of Term Loans may not be reborrowed. Within the limits set forth in clause (b) above and subject to the terms, conditions and limitations set forth herein, Borrower may borrow, pay or prepay and reborrow Revolving Loans.

**SECTION 2.02 Loans.**

(a) Each Loan (other than Swingline Loans) shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; *provided* that the failure of any Lender to make its Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.18(e)(i) and (ii), (x) ABR Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$100,000 and not less than \$500,000 or (ii) equal to the remaining available balance of the applicable Commitments and (y) the Eurodollar Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of \$100,000 and not less than \$1,000,000 or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Sections 2.11 and 2.12, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided* that Borrower shall not be entitled to request any Borrowing that, if made, would result in more than eight Eurodollar Borrowings outstanding hereunder at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Except with respect to Loans deemed made pursuant to Section 2.18(e)(ii), each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 4:00 p.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account as directed by Borrower in the applicable Borrowing Request maintained with the Administrative Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date (in the case of any Eurodollar Borrowing), and at least 2 hours prior to the time (in the case of any ABR Borrowing), of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent at the time of such Borrowing in accordance with paragraph (c) above, and the Administrative Agent may, in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement, and Borrower's obligation to repay the Administrative Agent such corresponding amount pursuant to this Section 2.02(d) shall cease.

(e) Notwithstanding any other provision of this Agreement, Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Revolving Maturity Date, Term Loan Maturity Date or Incremental Term Loan Maturity Date, as applicable.

### **SECTION 2.03 Borrowing Procedure.**

To request Loans, Borrower shall deliver, by hand delivery, e-mail through a "pdf" copy (if arrangements for doing so have been approved by the Administrative Agent) or telecopier, a duly completed and executed Borrowing Request to the Administrative Agent (i) in the case of Eurodollar Loans, not later than 2:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (ii) in the case of ABR Loans, not later than 2:00 p.m., New York City time, on the date of the proposed Borrowing. Each Borrowing Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

(a) whether the requested borrowing is to be a borrowing of Revolving Loans or Term Loans;

(b) the aggregate amount of such borrowing;

(c) the date of such borrowing, which shall be a Business Day;

(d) whether such borrowing is to be for ABR Loans or Eurodollar Loans; *provided* that all borrowings on the Closing Date shall be for ABR Loans (unless the Arrangers otherwise agree that any borrowings on the Closing Date may be for Eurodollar Loans);

(e) in the case of Eurodollar Loans, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; *provided* that until the date on which the Administrative Agent shall have notified Borrower that a Successful Syndication has been achieved, the Interest Period shall be one month;

(f) the location and number of Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.02(c); and

(g) that the conditions set forth in Sections 4.02(b)-(e) have been satisfied as of the date of the notice.

If no election as to the Type of Loans is specified, then the requested borrowing shall be for ABR Loans. If no Interest Period is specified with respect to any requested Eurodollar Loan, then Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

### **SECTION 2.04 Evidence of Debt; Repayment of Loans.**

(a) Promise to Repay. Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Term Loan Lender, the principal amount of each Term Loan of such Term Loan Lender as provided in Section 2.09, (ii) to the Administrative Agent for the account of each Revolving Lender, the then unpaid principal amount of each Revolving Loan of such Revolving Lender on the Revolving Maturity Date and (iii) to the Swingline Lender, the then unpaid principal amount of each Swingline Loan on the earlier of the Revolving Maturity Date and the first date after such Swingline Loan is made that is the 15th or

last day of a calendar month and is at least two Business Days after such Swingline Loan is made; *provided* that on each date that a Revolving Borrowing is made, Borrower shall repay all Swingline Loans that were outstanding on the date such Borrowing was requested.

(b) Lender and Administrative Agent Records. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. The Administrative Agent shall maintain records including (i) the amount of each Loan made hereunder, the Type and Class thereof and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. The entries made in the records maintained by the Administrative Agent and each Lender pursuant to this paragraph shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided* that the failure of any Lender or the Administrative Agent to maintain such records or any error therein shall not in any manner affect the obligations of Borrower to repay the Loans in accordance with their terms. In the event of any conflict between the records maintained by any Lender and the records of the Administrative Agent in respect of such matters, the records of the Administrative Agent shall control in the absence of manifest error.

(c) Promissory Notes. Any Lender by written notice to Borrower (with a copy to the Administrative Agent) may request that Loans of any Class made by it be evidenced by a promissory note. In such event, Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in the form of Exhibit K-1, K-2 or K-3, as the case may be. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more promissory notes in such form payable to the payee named therein (or its registered assigns).

#### **SECTION 2.05 Fees.**

(a) Commitment Fee. Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee (a "**Commitment Fee**") equal to the 0.75% per annum on the average daily unused amount of each Revolving Commitment of such Lender during the period from and including the date hereof to but excluding the date on which such Revolving Commitment terminates. Accrued Commitment Fees shall be payable in arrears (A) on the last Business Day of March, June, September and December of each year, commencing on the last Business Day of September 2011, and (B) on the date on which such Revolving Commitment terminates. Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing Commitment Fees with respect to Revolving Commitments, a Revolving Commitment of a Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and LC Exposure of such Lender (and the Swingline Exposure of such Lender shall be disregarded for such purpose).



(b) Administrative Agent Fees. Borrower agrees to pay to the Administrative Agent, for its own account, the administrative fees payable in the amounts and at the times separately agreed upon between Borrower and the Administrative Agent (the “**Administrative Agent Fees**”).

(c) LC and Fronting Fees. Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee (“**LC Participation Fee**”) with respect to its participations in Letters of Credit, which shall accrue at a rate equal to the Applicable Margin from time to time used to determine the interest rate on Eurodollar Revolving Loans pursuant to Section 2.06 on the average daily amount of such Lender’s LC Exposure (excluding any portion thereof attributable to Reimbursement Obligations) during the period from and including the Closing Date to but excluding the later of the date on which such Lender’s Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee (“**Fronting Fee**”), which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to Reimbursement Obligations) during the period from and including the Closing Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure (which Fronting Fee shall not be less than \$1,000 for any Letter of Credit), as well as the Issuing Bank’s customary fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder (which, for as long as UBS AG, Stamford Branch is the Issuing Bank, will include an issuance fee of \$500 per Letter of Credit, additional drawing fees of \$250 per draw, amendment fees of \$200 per amendment and \$250 for renewals on each anniversary of an Auto-Renewal Letter of Credit). Accrued LC Participation Fees and Fronting Fees shall be payable in arrears (i) on the last Business Day of March, June, September and December of each year, commencing on the last Business Day of September 2011, and (ii) on the date on which the Revolving Commitments terminate. Any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand therefor. All LC Participation Fees and Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) All Fees shall be paid on the dates due, in immediately available funds in dollars, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that Borrower shall pay the Fronting Fees and other fees payable pursuant to Section 2.05(c) directly to the Issuing Bank. Fees payable to UBS AG, Stamford Branch, as Issuing Bank, shall be paid to it in immediately available funds no later than 11:00 am (New York Time) on the due date thereof pursuant to wiring information provided separately to the Borrower by UBS AG, Stamford Branch. Once paid, none of the Fees shall be refundable under any circumstances.

#### **SECTION 2.06 Interest on Loans.**

(a) ABR Loans. Subject to the provisions of Section 2.06(c), the Loans comprising each ABR Borrowing, including each Swingline Loan, shall bear interest at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin in effect from time to time.

(b) Eurodollar Loans. Subject to the provisions of Section 2.06(c), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(c) Default Rate. Notwithstanding the foregoing, if there is (x) an Event of Default under Section 8.01(a), (b), (g) or (h) or (y) any other Event of Default, then, automatically in the case of Events of Default under clause (x), and after the election of the Administrative Agent or the Required Lenders in the case of Events of Default under clause (y), the Obligations shall, to the extent permitted by applicable law, bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of amounts constituting principal on any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.06 or (ii) in the case of any other outstanding amount, 2% plus the rate applicable to ABR Revolving Loans as provided in Section 2.06(a) (in either case, the "Default Rate").

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to Section 2.06(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan or a Swingline Loan without a permanent reduction in Revolving Commitments), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Interest Calculation. All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error.

#### **SECTION 2.07 Termination and Reduction of Commitments.**

(a) Termination of Commitments. The Term Loan Commitments shall automatically terminate at 5:00 p.m., New York City time, on the Closing Date. The Revolving Commitments, the Swingline Commitment and the LC Commitment shall automatically terminate on the Revolving Maturity Date. Notwithstanding the foregoing, all the Commitments shall automatically terminate at 5:00 p.m., New York City time, on September 30, 2011, if the initial Credit Extension shall not have occurred by such time.

(b) Optional Terminations and Reductions. At its option, Borrower may at any time terminate, or from time to time permanently reduce, the Commitments of any Class; provided that (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of \$100,000 and not less than \$1,000,000 and (ii) the Revolving Commitments shall not be terminated or reduced if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.10, the aggregate amount of Revolving Exposures would exceed the aggregate amount of Revolving Commitments.

(c) **Borrower Notice.** Borrower shall notify the Administrative Agent in writing of any election to terminate or reduce the Commitments under Section 2.07(b) at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by Borrower pursuant to this Section shall be irrevocable; *provided* that a notice of reduction or termination of the Commitments delivered by Borrower may state that such notice is conditioned upon the effectiveness of another credit facility, the incurrence of other Indebtedness, the consummation of a particular disposition or the occurrence of a Change in Control, or the closing of a securities offering, in which case such notice may be revoked by Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

#### **SECTION 2.08 Interest Elections.**

(a) **Generally.** Each Revolving Borrowing and Term Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Notwithstanding anything to the contrary, Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than eight Eurodollar Borrowings outstanding hereunder at any one time. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) **Interest Election Notice.** To make an election pursuant to this Section, Borrower shall deliver, by hand delivery or telecopier, a duly completed and executed Interest Election Request to the Administrative Agent not later than the time that a Borrowing Request would be required under Section 2.03 if Borrower were requesting Loans of the Type resulting from such election to be made on the effective date of such election. Each Interest Election Request shall be irrevocable. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, or if outstanding Borrowings are being combined, allocation to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
- (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and
- (iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period"; provided that until the date on which the Administrative Agent shall have notified Borrower that a Successful Syndication has been achieved, the Interest Period shall be one month.

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then Borrower shall be deemed to have selected an Interest Period of one month's duration.

Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(c) Automatic Conversion to ABR Borrowing. If an Interest Election Request with respect to a Eurodollar Borrowing is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, the Administrative Agent or the Required Lenders may require, by notice to Borrower, that (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

#### **SECTION 2.09 Amortization of Term Borrowings.**

Borrower shall pay to the Administrative Agent, for the account of the Lenders, on the dates set forth on Annex I, or if any such date is not a Business Day, on the immediately preceding Business Day (each such date, a "**Term Loan Repayment Date**"), a principal amount of the Term Loans equal to the amount set forth on Annex I for such date (as adjusted from time to time pursuant to Section 2.10(h) and Section 2.21(h)), together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment; *provided* that in the event Incremental Term Loans are made, such Incremental Term Loans shall be repaid on each Term Loan Repayment Date occurring on or after the applicable Increase Effective Date in an amount set forth in the Increase Joinder. To the extent not previously paid, all Term Loans shall be due and payable on the Term Loan Maturity Date and all Incremental Term Loans shall be due and payable on the Incremental Term Loan Maturity Date.

#### **SECTION 2.10 Optional and Mandatory Prepayments of Loans.**

(a) Optional Prepayments. Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, subject to the requirements of this Section 2.10; *provided* that each partial prepayment of Loans shall be in an amount that is an integral multiple of \$500,000 and not less than \$1,000,000 or, if less, the outstanding principal amount of such Borrowing.

(b) Revolving Loan Prepayments.

(i) In the event of the termination of all the Revolving Commitments, Borrower shall, on the date of such termination, repay or prepay all its outstanding Revolving Borrowings and all outstanding Swingline Loans and replace all outstanding Letters of Credit or cash collateralize all outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(i).

(ii) In the event of any partial reduction of the Revolving Commitments, then (x) at or prior to the effective date of such reduction, the Administrative Agent shall notify Borrower and the Revolving Lenders of the sum of the Revolving Exposures after giving effect thereto and (y) if the sum of the Revolving Exposures would exceed the aggregate amount of Revolving Commitments after giving effect to such reduction, then Borrower shall, on the date of such reduction, *first*, repay or prepay Swingline Loans, *second*, repay or prepay Revolving Borrowings and *third*, replace outstanding Letters of Credit or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(i), in an aggregate amount sufficient to eliminate such excess.

(iii) In the event that the sum of all Lenders' Revolving Exposures exceeds the Revolving Commitments then in effect, Borrower shall, without notice or demand, immediately *first*, repay or prepay Swingline Loans, *second*, repay or prepay Revolving Borrowings, and *third*, replace outstanding Letters of Credit or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(i), in an aggregate amount sufficient to eliminate such excess.

(iv) In the event that the aggregate LC Exposure exceeds the LC Commitment then in effect, Borrower shall, without notice or demand, immediately replace outstanding Letters of Credit or cash collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.18(i), in an aggregate amount sufficient to eliminate such excess.

(v) In the event that the aggregate Swingline Exposure exceeds the Swingline Commitment then in effect, Borrower shall, without notice or demand, immediately repay or prepay Swingline Loans in an aggregate amount sufficient to eliminate such excess.

(c) Asset Sales. Not later than five Business Days following the receipt of any Net Cash Proceeds of any Asset Sale by Borrower or any of its Subsidiaries, Borrower shall make prepayments in accordance with Sections 2.10(h) and (i) in an aggregate amount equal to 100% of such Net Cash Proceeds; *provided that*:

(i) no such prepayment shall be required under this Section 2.10(c)(i) with respect to (A) any Asset Sale permitted by Section 6.06(b) through (f), (B) the disposition of property which constitutes a Casualty Event, or (C) Asset Sales for fair market value resulting in no more than \$2.5 million in Net Cash Proceeds per Asset Sale (or series of related Asset Sales) and less than \$5.0 million in Net Cash Proceeds in any fiscal year; *provided that* clause (C) shall not apply in the case of any Asset Sale described in clause (b) of the definition thereof;

(ii) so long as no Default shall then exist or would arise therefrom, such proceeds shall not be required to be so applied on such date to the extent that Borrower shall have delivered an Officers' Certificate to the Administrative Agent on or prior to such date stating that such Net Cash Proceeds are expected to be reinvested in fixed or capital assets within 12 months following the date of such Asset Sale (which Officers' Certificate shall set forth the estimates of the proceeds to be so expended); *provided* that if all or any portion of such Net Cash Proceeds is not so reinvested within such 12-month period, such unused portion shall be applied on the last day of such period as a mandatory prepayment as provided in this Section 2.10(c); *provided, further*, that if the property subject to such Asset Sale constituted Collateral, then all property purchased with the Net Cash Proceeds thereof pursuant to this subsection shall be made subject to the Lien of the applicable Security Documents in favor of the Collateral Agent, for its benefit and for the benefit of the other Secured Parties in accordance with Sections 5.11 and 5.12; and

(iii) notwithstanding any provision of this Section 2.10(c) to the contrary, to the extent that the Borrower has determined in good faith that repatriation of any or all of the Net Cash Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment under this Section 2.10(c) (a "**Foreign Asset Sale**") would cause material adverse tax consequences (taking into account any foreign tax credit or benefit received in connection with such repatriation) with respect to such Net Cash Proceeds, then, to the extent that such material adverse tax liability is not directly attributable to actions taken by the Borrower or its Subsidiaries with the intent of avoiding or reducing the mandatory prepayments otherwise required under this Agreement, the Net Cash Proceeds from a Foreign Asset Sale so affected may be retained by the applicable Foreign Subsidiary, *provided* that on or before the date on which any Net Cash Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to this Section 2.10(c), the Borrower applies an amount equal to such Net Cash Proceeds to such reinvestments or prepayments as if such Net Cash Proceeds had been received by or was attributable to the Borrower rather than such Foreign Subsidiary, less the amount of additional taxes that would have been payable or reserved against if such Net Cash Proceeds had been repatriated.

(d) Debt Issuance or Preferred Stock Issuance. Not later than five Business Days following the receipt of any Net Cash Proceeds of any Debt Issuance or Preferred Stock Issuance by Borrower or any of its Subsidiaries, Borrower shall make prepayments in accordance with Sections 2.10(h) and (i) in an aggregate amount equal to 100% of such Net Cash Proceeds.

(e) Reserved.

(f) Casualty Events. Not later than five Business Days following the receipt of any Net Cash Proceeds from a Casualty Event by Borrower or any of its Subsidiaries, Borrower shall make prepayments in accordance with Sections 2.10(h) and (i) in an aggregate amount equal to 100% of such Net Cash Proceeds; *provided* that:

(i) so long as no Default shall then exist or arise therefrom, such proceeds shall not be required to be so applied on such date to the extent that Borrower shall have delivered an Officers' Certificate to the Administrative Agent on or prior to such date stating that such proceeds are expected to be used to repair, replace or restore any property in respect of which such Net Cash Proceeds were paid or to reinvest in other fixed or capital assets to be used in Borrower's business, no later than 12 months following the date of receipt of such proceeds; *provided* that if the property subject to such Casualty Event constituted Collateral under the Security Documents, then all property purchased with the Net Cash Proceeds thereof pursuant to this subsection shall be made subject to the Lien of the applicable Security Documents in favor of the Collateral Agent, for its benefit and for the benefit of the other Secured Parties in accordance with Sections 5.11 and 5.12; and

(ii) if any portion of such Net Cash Proceeds shall not be so applied within such 12-month period, such unused portion shall be applied on the last day of such period as a mandatory prepayment as provided in this Section 2.10(f).

(g) Excess Cash Flow. No later than five Business Days after the date on which the financial statements with respect to each fiscal year in which an Excess Cash Flow Period occurs are or are required to be delivered pursuant to Section 5.01(a) (without giving effect to any grace period applicable thereto), Borrower shall make prepayments in accordance with Sections 2.10(h) and (i) in an aggregate amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow for the Excess Cash Flow Period then ended minus (B) any voluntary prepayments of Loans pursuant to Section 2.10(a) made during such Excess Cash Flow Period with Internally Generated Cash (including voluntary prepayments of Revolving Loans to the extent accompanied by a simultaneous and equivalent permanent reduction in the Revolving Commitments).

(h) Application of Prepayments. Prior to any optional or mandatory prepayment hereunder, Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to Section 2.10(i), subject to the provisions of this Section 2.10(h). In the event of any optional or mandatory prepayment of Term Borrowings made at a time when Term Borrowings of more than one Class remain outstanding, the aggregate amount of such prepayment shall be allocated between the Classes of Term Loans *pro rata* based on the aggregate principal amount of outstanding Borrowings of each such Class. Notwithstanding the foregoing any Term Loan Lender may elect, by written notice to the Administrative Agent at least one Business Day prior to the prepayment date, to decline all or any portion of any prepayment of its Term Loans, pursuant to this Section 2.10, in which case the aggregate amount of the prepayment that would have been applied to prepay such Term Loans, but was so declined shall be ratably offered to each Term Loan Lender that initially accepted such prepayment. Any amounts rejected by such Lenders shall be retained by Borrower. Any prepayments of Term Loans pursuant to Section 2.10(a), shall be applied to reduce scheduled repayments required under Section 2.09, as directed by Borrower. Any prepayments of Term Loans pursuant to Section 2.10 (c), (d), (f) or (g) shall be applied on a *pro rata* basis among the repayments remaining to be made on each Term Loan Repayment Date for such Class of Term Loans (inclusive of the payment due on the Term Loan Maturity Date or Incremental Term Loan Maturity Date, as the case may be).

Amounts to be applied pursuant to this Section 2.10 to the prepayment of Term Loans and Revolving Loans shall be applied, as applicable, first to reduce outstanding ABR Term Loans and ABR Revolving Loans, respectively. Any amounts remaining after each such application shall be applied to prepay Eurodollar Term Loans or Eurodollar Revolving Loans, as applicable. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.10 shall be in excess of the amount of the ABR Loans at the time outstanding (an “**Excess Amount**”), then, at the election of Borrower, only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and the Excess Amount shall be either (A) deposited in an escrow account on terms satisfactory to the Collateral Agent and applied to the prepayment of Eurodollar Loans on the last day of the then next-expiring Interest Period for Eurodollar Loans; *provided* that (i) interest in respect of such Excess Amount shall continue to accrue thereon at the rate provided hereunder for the Loans which such Excess Amount is intended to repay until such Excess Amount shall have been used in full to repay such Loans and (ii) at any time while a Default has occurred and is continuing, the Administrative Agent may, and upon written direction from the Required Lenders shall, apply any or all proceeds then on deposit to the payment of such Loans in an amount equal to such Excess Amount or (B) prepaid immediately, together with any amounts owing to the Lenders under Section 2.13.

(i) Notice of Prepayment. Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by written notice of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment and (iii) in the case of prepayment of a Swingline Loan, not later than 2:00 p.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable; *provided* that a notice of prepayment delivered by Borrower may state that such notice is conditioned upon the effectiveness of another credit facility or the closing of a securities offering, the incurrence of other Indebtedness, the consummation of a particular disposition or the occurrence of a Change in Control, in which case such notice may be revoked by Borrower (by notice to the Administrative Agent on or prior to the specified prepayment date) if such condition is not satisfied. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Credit Extension of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing and otherwise in accordance with this Section 2.10. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06.

(j) Prepayment Premium. In the event that, within one year of the Closing Date, (x) Borrower makes any prepayment of Term Loans in connection with any Repricing Transaction, or (y) effects any amendment of this Agreement resulting in a Repricing Transaction, Borrower shall pay to the Administrative Agent, for the ratable account of each of the applicable Term



Loan Lenders, (I) in the case of clause (x), a prepayment premium of 1% of the amount of the Term Loans being prepaid and (II) in the case of clause (y), a payment equal to 1% of the aggregate amount of the applicable Term Loans outstanding immediately prior to such amendment.

**SECTION 2.11 Alternate Rate of Interest.**

If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be final and conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate for such Interest Period; or

(b) the Administrative Agent determines or is advised in writing by the Required Lenders that the Adjusted LIBOR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give written notice thereof to Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Eurodollar Borrowing requested to be made on the first day of such Interest Period shall be made as an ABR Loan, (ii) any Borrowing that were to have been converted on the first day of such Interest Period to a Eurodollar Borrowing shall be continued as an ABR Loan and (iii) any outstanding Eurodollar Borrowing shall be converted, on the last day of the then-current Interest Period, to an ABR Loan.

**SECTION 2.12 Yield Protection.**

(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 reflected in the Adjusted LIBOR Rate) or the Issuing Bank;

(ii) subject any Lender or the Issuing Bank to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loan made by it, or change the basis of taxation of payments to such Lender or the Issuing Bank in respect thereof (except for Indemnified Taxes or Other Taxes indemnified under Section 2.15 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the Issuing Bank); or

(iii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, the Issuing Bank or such Lender's or the Issuing Bank's holding company, if any, of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or any other amount), then, upon request of such Lender or the Issuing Bank, Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the Issuing Bank determines (in good faith, but in its sole absolute discretion) that any Change in Law affecting such Lender or the Issuing Bank or any lending office of such Lender or such Lender's or the Issuing Bank's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.12 (which certificate shall also set forth in reasonable detail the calculation of such amounts) and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; *provided* that Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the Issuing Bank, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

### **SECTION 2.13 Breakage Payments.**

In the event of (a) the payment or prepayment, whether optional or mandatory, of any principal of any Eurodollar Loan earlier than the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan earlier than the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Revolving Loan or Term Loan on the date specified in any notice delivered pursuant hereto, (d) the assignment of any Eurodollar Loan earlier than the last day of the Interest Period applicable thereto as a result of a request by Borrower pursuant to Section 2.16(b), or (e) any assignment of any Eurodollar Loan prior to the date on which the Arrangers shall have notified Borrower that a Successful Syndication has been achieved and earlier than the last day of the Interest Period applicable thereto, then, in any such event, Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to Borrower (with a copy to the Administrative Agent) and shall be conclusive and binding absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within 5 days after receipt thereof.

### **SECTION 2.14 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.**

(a) Payments Generally. Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or Reimbursement Obligations, or of amounts payable under Section 2.12, 2.13, 2.15 or 10.03, or otherwise) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without setoff, deduction or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at Stamford, Connecticut, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.12, 2.13, 2.15 and 10.03 shall be made directly to the persons entitled thereto and payments pursuant to other Loan Documents shall be made to the persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, unless specified otherwise, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars, except as expressly specified otherwise.

(b) Pro Rata Treatment.

(i) Each payment by Borrower of interest in respect of the Loans shall be applied to the amounts of such obligations owing to the Lenders *pro rata* according to the respective amounts then due and owing to the Lenders.

(ii) Each payment on account of principal of the Term Loans shall be allocated among the Term Loan Lenders *pro rata* based on the principal amount of the Term Loans held by the Term Loan Lenders. Each payment by Borrower on account of principal of the Revolving Borrowings shall be made *pro rata* according to the respective outstanding principal amounts of the Revolving Loans then held by the Revolving Lenders, except as expressly provided in Section 2.20(d).

(c) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, Reimbursement Obligations, interest and fees then due hereunder, such funds shall be applied (i) *first*, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) *second*, toward payment of principal and Reimbursement Obligations then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and Reimbursement Obligations then due to such parties. It is understood that the foregoing does not apply to any adequate protection payments under any federal, state or foreign bankruptcy, insolvency, receivership or similar proceeding, and that the Administrative Agent may, subject to any applicable federal, state or foreign bankruptcy, insolvency, receivership or similar orders, distribute any adequate protection payments it receives on behalf of the Lenders to the Lenders in its sole discretion (*i.e.*, whether to pay the earliest accrued interest, all accrued interest on a *pro rata* basis or otherwise).

(d) Sharing of Set-Off. If any Lender (and/or the Issuing Bank, which shall be deemed a "Lender" for purposes of this Section 2.14(d)) shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other Obligations 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 and such other obligations 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 paragraph shall not be construed to apply to (x) any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to Borrower or any Subsidiary thereof (as to which the provisions of this paragraph (d) shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of 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. If under applicable bankruptcy, insolvency or any similar law any Secured Party receives a secured claim in lieu of a setoff or counterclaim to which this Section 2.14(d) applies, such Secured Party shall to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights to which the Secured Party is entitled under this Section 2.14(d) to share in the benefits of the recovery of such secured claim.

(e) Borrower Default. Unless the Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that Borrower will not make such payment, the Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing Bank 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 greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) Discounted Voluntary Prepayments. Notwithstanding anything in this Agreement to the contrary, it is understood and agreed that Section 2.14(b)(i), Section 2.14(b)(ii) and Section 2.14(d) shall not apply to payments made to those Lenders agreeing to prepayments of their Term Loans by the Borrower pursuant to Discounted Voluntary Prepayments permitted under Section 2.21.

#### **SECTION 2.15 Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on account of any Obligation of the Loan Parties hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes (including any Other Taxes); *provided* that if the applicable withholding agent shall be required by applicable Requirements of Law (as determined in the good faith discretion of the applicable withholding agent) to deduct or withhold any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased by the Loan Parties as necessary so that

after all required deductions or withholdings have been made (including deductions or withholdings applicable to additional sums payable under this Section) 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 or withholdings been made, (ii) the applicable withholding agent shall make such deductions or withholdings and (iii) the applicable withholding shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) Payment of Other Taxes by Borrower. Without limiting the provisions of paragraph (a) above, Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(c) Indemnification by Borrower. The Loan Parties shall jointly and severally indemnify the Administrative Agent and each Lender, within thirty (30) days after 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) payable by the Administrative Agent or such Lender, as the case may be, and any 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 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.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, the relevant Loan Party 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 any withholding tax with respect to any payments hereunder or under any other Loan Document shall, to the extent it may lawfully do so, deliver to Borrower and to the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Requirements of 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 Borrower or the Administrative Agent, shall deliver such other documentation or information prescribed by applicable Requirements of Law or reasonably requested by Borrower or the Administrative Agent as will enable Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the above two sentences, in the case of any withholding taxes that are not U.S. taxes, the completion, execution and submission of non-U.S. federal forms shall not be required if in the Lender's reasonable judgment exercised in good faith such completion, execution or submission would subject such Lender to any unreimbursed cost or expense, would be disadvantageous to such Lender in any material respect or would require such Lender to disclose information it reasonably deems confidential.

Without limiting the generality of the foregoing, any Foreign Lender shall, to the extent it may lawfully do so, deliver to 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 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 forms) claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

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

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (x) a certificate, in substantially the form of Exhibit Q, or any other form approved by the Administrative Agent, to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of 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 that no payments in connection with the Loan Documents are effectively connected with such Foreign Lender’s conduct of a U.S. trade or business and (y) duly completed copies of Internal Revenue Service Form W-8BEN (or any successor forms) certifying to such Lender’s entitlement to a complete exemption from United States withholding tax under the portfolio interest exception,

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or participating Lender granting a typical participation), an Internal Revenue Service Form W-8IMY, accompanied by a Form W-8ECI, W-8BEN, a certificate in substantially the form of Exhibit Q, Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that, if the Foreign Lender is a partnership (and not a participating Lender) and one or more beneficial owners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a certificate, in substantially the form of Exhibit Q (with appropriate revisions), on behalf of such beneficial owner(s), or

(v) any other form prescribed by applicable Requirements of 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 Requirements of Law to permit Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

Any Lender that is not a Foreign Lender shall deliver to Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as prescribed by applicable law or upon the request of Borrower or the Administrative Agent), duly executed and properly completed copies of Internal Revenue Service Form W-9 (or any successor form(s)) certifying that it is not subject to backup withholding.

Each Lender shall, from time to time after the initial delivery by such Lender of the forms described above, whenever a lapse in time or change in such Lender's circumstances renders such forms, certificates or other evidence so delivered obsolete or inaccurate, promptly (1) deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) renewals, amendments or additional or successor forms, properly completed and duly executed by such Lender, together with any other certificate or statement of exemption required in order to confirm or establish such Lender's status or that such Lender is entitled to an exemption from or reduction in U.S. federal withholding tax or (2) notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence.

Each Foreign Lender that is entitled to an exemption from or reduction of any withholding tax imposed under FATCA shall comply with any certification, documentation, information or other reporting necessary to establish an exemption from withholding under FATCA and shall provide any other documentation reasonably requested by the Borrower or the Administrative Agent sufficient for the Administrative Agent and the Borrower to comply with their obligations under FATCA and to determine that such Foreign Lender has complied with such applicable reporting requirements. Solely for purposes of the immediately preceding sentence, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Treatment of Certain Refunds. If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section, it shall pay to the applicable Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender or in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its Tax Returns (or any other information relating to its Taxes that it deems confidential) to the Loan Party or any other person. Notwithstanding anything to the contrary, in no event will the Administrative Agent or any Lender be required to pay any amount to a Loan Party the payment of which would place the Administrative Agent or such Lender in a less favorable net after-tax position than the Administrative Agent or such Lender would have been in if the Indemnified Taxes or Other Taxes giving rise to such refund had never been imposed in the first instance.



(g) Payments. For purposes of this Section 2.15, any payments by the Administrative Agent to a Lender of any amounts received by the Administrative Agent from Borrower on behalf of such Lender shall be treated as a payment from Borrower to such Lender.

(h) Issuing Bank. For all purposes of this Section 2.15, the term Lender shall include the Issuing Bank.

**SECTION 2.16 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.12, or requires Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.15, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses submitted by such Lender to Borrower shall be conclusive absent manifest error.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.12, or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, or if any Lender is a Defaulting Lender, or if Borrower exercises its replacement rights under Section 10.02(d), then Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.04), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided that*:

(i) Borrower shall have paid to the Administrative Agent the processing and recordation fee specified in Section 10.04(b);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts (x) under Section 2.13 and (y) payable pursuant to Section 2.10(j)) if a Lender is being replaced pursuant to Section 10.02(d) in connection with a Repricing Transaction), from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts;

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable Requirements of Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

Each Lender agrees that, if Borrower elects to replace such Lender in accordance with this [Section 2.16\(b\)](#), it shall promptly execute and deliver to the Administrative Agent an Assignment and Assumption to evidence the assignment and shall deliver to the Administrative Agent any Note (if Notes have been issued in respect of such Lender's Loans) subject to such Assignment and Assumption; *provided* that the failure of any such Lender to execute an Assignment and Assumption shall not render such assignment invalid and such assignment shall be recorded in the Register.

#### **SECTION 2.17 Swingline Loans.**

(a) Swingline Commitment. Subject to the terms and conditions set forth herein, the Swingline Lender agrees, in reliance upon the agreements of the other Lenders set forth in this [Section 2.17](#) and in its discretion, to make Swingline Loans to Borrower from time to time during the Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$10.0 million or (ii) the sum of the total Revolving Exposures exceeding the total Revolving Commitments; *provided* that the Borrower shall not use the proceeds of any Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, Borrower may borrow, repay and reborrow Swingline Loans.

(b) Swingline Loans. To request a Swingline Loan, Borrower shall deliver, by hand delivery, e-mail through a "pdf" copy (if arrangements for doing so have been approved by the Swingline Lender) or telecopier, a duly completed and executed Borrowing Request to the Administrative Agent and the Swingline Lender, not later than 3:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and the amount of the requested Swingline Loan. Each Swingline Loan shall be an ABR Loan. The Swingline Lender shall make each Swingline Loan available to Borrower to an account as directed by Borrower in the applicable Borrowing Request maintained with the Administrative Agent (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in [Section 2.18\(e\)](#), by remittance to the Issuing Bank) by 4:00 p.m., New York City time, on the requested date of such Swingline Loan. Borrower shall not request a Swingline Loan if at the time of or immediately after giving effect to the Extension of Credit contemplated by such request a Default has occurred and is continuing or would result therefrom. Swingline Loans shall be made in minimum amounts of \$1,000,000 and integral multiples of \$500,000 above such amount.

(c) Prepayment. Borrower shall have the right at any time and from time to time to repay any Swingline Loan, in whole or in part, upon giving written notice to the Swingline Lender and the Administrative Agent before 2:00 p.m., New York City time, on the proposed date of prepayment.

(d) **Participations.** The Swingline Lender may at any time in its discretion by written notice given to the Administrative Agent (*provided* such notice requirement shall not apply if the Swingline Lender and the Administrative Agent are the same entity) not later than 11:00 a.m., New York City time, on the next succeeding Business Day following such notice require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans then outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever (so long as such payment shall not cause such Lender's Revolving Exposure to exceed such Lender's Revolving Commitment). Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.02(c) with respect to Loans made by such Lender (and Section 2.02 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify Borrower of any participations in any Swingline Loan acquired by the Revolving Lenders pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from Borrower (or other party on behalf of Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent. Any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve Borrower of any default in the payment thereof.

#### **SECTION 2.18 Letters of Credit.**

(a) **General.** Subject to the terms and conditions set forth herein, Borrower may request the Issuing Bank, and the Issuing Bank agrees, to issue Letters of Credit for its own account or the account of a Subsidiary in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Availability Period (*provided* that Borrower shall be a co-applicant, and be jointly and severally liable, with respect to each Letter of Credit issued for the account of a Subsidiary). The Issuing Bank shall have no obligation to issue, and Borrower shall not request the issuance of, any Letter of Credit at any time if after giving effect to such issuance, the LC Exposure would exceed the LC

Commitment or the total Revolving Exposure would exceed the total Revolving Commitments. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(b) Request for Issuance, Amendment, Renewal, Extension; Certain Conditions and Notices. To request the issuance of a Letter of Credit or the amendment, renewal or extension of an outstanding Letter of Credit, Borrower shall deliver, by hand or telecopier (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank), an LC Request to the Issuing Bank and the Administrative Agent not later than 11:00 a.m. on the fifth Business Day preceding the requested date of issuance, amendment, renewal or extension (or such later date and time as is acceptable to the Issuing Bank).

A request for an initial issuance of a Letter of Credit shall specify in form and detail satisfactory to the Issuing Bank:

- (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day);
- (ii) the amount thereof;
- (iii) the expiry date thereof (which shall not be later than the close of business on the Letter of Credit Expiration Date);
- (iv) the name and address of the beneficiary thereof;
- (v) whether the Letter of Credit is to be issued for its own account or for the account of one of its Subsidiaries (*provided* that Borrower shall be a co-applicant, and therefore jointly and severally liable, with respect to each Letter of Credit issued for the account of a Subsidiary);
- (vi) the documents to be presented by such beneficiary in connection with any drawing thereunder;
- (vii) the full text of any certificate to be presented by such beneficiary in connection with any drawing thereunder; and
- (viii) such other matters as the Issuing Bank may require.

A request for an amendment, renewal or extension of any outstanding Letter of Credit shall specify in form and detail satisfactory to the Issuing Bank:

- (ix) the Letter of Credit to be amended, renewed or extended;

- (x) the proposed date of amendment, renewal or extension thereof (which shall be a Business Day);
- (xi) the nature of the proposed amendment, renewal or extension; and
- (xii) such other matters as the Issuing Bank may require.

If requested by the Issuing Bank, Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and, upon issuance, amendment, renewal or extension of each Letter of Credit, Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension, (i) the LC Exposure shall not exceed the LC Commitment, (ii) the total Revolving Exposures shall not exceed the total Revolving Commitments and (iii) the conditions set forth in Article IV in respect of such issuance, amendment, renewal or extension shall have been satisfied. Unless the Issuing Bank and the Administrative Agent shall agree otherwise, no Letter of Credit shall be in an initial amount less than \$100,000, in the case of a Commercial Letter of Credit, or \$100,000, in the case of a Standby Letter of Credit, or is to be denominated in a currency other than Dollars.

Upon the issuance of any Letter of Credit or amendment, renewal, extension or modification to a Letter of Credit, the Issuing Bank shall promptly notify the Administrative Agent, who shall promptly notify each Revolving Lender, thereof, which notice shall be accompanied by a copy of such Letter of Credit or amendment, renewal, extension or modification to a Letter of Credit and the amount of such Lender's respective participation in such Letter of Credit pursuant to Section 2.18(d). If the Issuing Bank is not the same person as the Administrative Agent, on the first Business Day of each calendar month, the Issuing Bank shall provide to the Administrative Agent a report listing all outstanding Letters of Credit and the amounts and beneficiaries thereof and the Administrative Agent shall promptly provide such report to each Revolving Lender.

(c) Expiration Date.

(i) Each Letter of Credit shall expire at or prior to the close of business on the earlier of (x) the date which is one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (y) the Letter of Credit Expiration Date.

(ii) If Borrower so requests in any Letter of Credit Request, the Issuing Bank may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic renewal provisions (each, an "**Auto-Renewal Letter of Credit**"); provided that any such Auto-Renewal Letter of Credit must permit the Issuing Bank to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Bank, Borrower shall not be required to make a specific request to the Issuing Bank for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the Issuing Bank to permit the

renewal of such Letter of Credit at any time to an expiry date not later than the earlier of (i) one year from the date of such renewal and (ii) the Letter of Credit Expiration Date; provided that the Issuing Bank shall not permit any such renewal if (x) the Issuing Bank has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of Section 2.18(1) or otherwise), or (y) it has received notice on or before the day that is two Business Days before the date which has been agreed upon pursuant to the proviso of the first sentence of this paragraph, (1) from the Administrative Agent that any Revolving Lender directly affected thereby has elected not to permit such renewal or (2) from the Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in Section 4.02 are not then satisfied.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby irrevocably grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Revolving Lender's Pro Rata Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by Borrower on the date due as provided in Section 2.18(e), or of any reimbursement payment required to be refunded to Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, or expiration, termination or cash collateralization of any Letter of Credit and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Any payment hereunder by any Revolving Lender shall be in dollars.

(e) Reimbursement.

(i) If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, Borrower shall reimburse such LC Disbursement by paying to the Issuing Bank an amount equal to such LC Disbursement not later than 3:00 p.m., New York City time, on the date that such LC Disbursement is made if Borrower shall have received notice of such LC Disbursement prior to 11:00 a.m., New York City time, on such date, or, if such notice has not been received by Borrower prior to such time on such date, then not later than 3:00 p.m., New York City time, on the Business Day immediately following the day that Borrower receives such notice; *provided* that Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with ABR Revolving Loans or Swingline Loans in an equivalent amount and, to the extent so financed, Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Loans or Swingline Loans.

(ii) If Borrower fails to make such payment when due, the Issuing Bank shall notify the Administrative Agent and the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from Borrower in respect thereof and such Revolving Lender's Pro Rata Percentage thereof. Each Revolving Lender shall pay by wire transfer of immediately available funds to the Administrative Agent not later than 2:00 p.m., New York City time, on such date (or, if such Revolving Lender shall have received such notice later than 12:00 noon, New York City time, on any day, not later than 11:00 a.m., New York City time, on the immediately following Business Day), an amount equal to such Revolving Lender's Pro Rata Percentage of the unreimbursed LC Disbursement in the same manner as provided in Section 2.02(c) with respect to Revolving Loans made by such Revolving Lender, and the Administrative Agent will promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. The Administrative Agent will promptly pay to the Issuing Bank any amounts received by it from Borrower pursuant to the above paragraph prior to the time that any Revolving Lender makes any payment pursuant to the preceding sentence and any such amounts received by the Administrative Agent from Borrower thereafter will be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made such payments and to the Issuing Bank, as appropriate.

(iii) If any Revolving Lender shall not have made its Pro Rata Percentage of such LC Disbursement available to the Administrative Agent as provided above, each of such Revolving Lender and Borrower severally agrees to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with the foregoing to but excluding the date such amount is paid, to the Administrative Agent for the account of the Issuing Bank at (i) in the case of Borrower, the rate per annum set forth in Section 2.18(h) and (ii) in the case of such Lender, at a rate determined by the Administrative Agent in accordance with banking industry rules or practices on interbank compensation.

(f) Obligations Absolute. The Reimbursement Obligation of Borrower as provided in Section 2.18(e) shall be absolute, unconditional and irrevocable, and shall be paid and performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein; (ii) any draft or other document presented under a Letter of Credit being proved to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that fails to comply with the terms of such Letter of Credit; (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.18(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of Borrower hereunder; (v) the fact that a Default shall have occurred and be continuing; or (vi) any material adverse change in the business, property, results of operations, prospects or condition, financial or otherwise, of Borrower and its Subsidiaries. None of the Agents, the Lenders, the Issuing Bank or any of their Affiliates shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; *provided* that the foregoing shall not be construed to excuse the Issuing Bank

from liability to Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable Requirements of Law) suffered by Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly give written notice to the Administrative Agent and Borrower of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve Borrower of its Reimbursement Obligation to the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement (other than with respect to the timing of such Reimbursement Obligation set forth in Section 2.18(e)).

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest payable on demand, for each day from and including the date such LC Disbursement is made to and including the date that Borrower is required to reimburse such LC Disbursement under Section 2.18(e)(i), at the interest rate then in effect for ABR Loans, and thereafter, at the rate per annum determined pursuant to Section 2.06(c) until (but excluding) the date that Borrower reimburses such LC Disbursement. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to Section 2.18(e) to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, Borrower shall deposit on terms and in accounts satisfactory to the Collateral Agent, in the name of the Collateral Agent and for the benefit of the Revolving Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to Borrower described in Section 8.01(g) or (h). Funds so deposited shall be applied by



the Collateral Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of outstanding Reimbursement Obligations or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations of Borrower under this Agreement. If Borrower is required to provide an amount of cash collateral under this Section 2.18(i) as a result of the occurrence of an Event of Default, such amount *plus* any accrued interest or realized profits with respect to such amounts (to the extent not applied as aforesaid) shall be returned to Borrower within three Business Days after all Events of Default have been cured or waived.

(j) Additional Issuing Banks. Borrower may, at any time and from time to time, designate one or more additional Revolving Lenders to act as an issuing bank under the terms of this Agreement, with the consent of the Administrative Agent (which consent shall not be unreasonably withheld), the Issuing Bank and such Revolving Lender(s). Any Revolving Lender designated as an issuing bank pursuant to this paragraph (j) shall have all the rights and obligations of the Issuing Bank under the Loan Documents with respect to Letters of Credit issued or to be issued by it, and all references in the Loan Documents to the term "Issuing Bank" shall, with respect to such Letters of Credit, be deemed to refer to such Revolving Lender in its capacity as the Issuing Bank, as the context shall require. The Administrative Agent shall notify the Lenders of any such additional Issuing Bank. If at any time there is more than one Issuing Bank hereunder, Borrower may, in its discretion, select which Issuing Bank is to issue any particular Letter of Credit.

(k) Resignation or Removal of the Issuing Bank. The Issuing Bank may resign as Issuing Bank hereunder at any time upon at least 30 days' prior notice to the Lenders, the Administrative Agent and Borrower. The Issuing Bank may be replaced at any time by written agreement among Borrower, each Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such resignation of the Issuing Bank shall become effective, Borrower shall pay all unpaid fees accrued for the account of the retiring Issuing Bank pursuant to Section 2.05(c). From and after the effective date of any such resignation or replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the resignation or replacement of an Issuing Bank, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such resignation or replacement, but shall not be required to issue additional Letters of Credit.

(l) Other. The Issuing Bank shall be under no obligation to issue any Letter of Credit if

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirements of Law applicable to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with

jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Bank in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank.

The Issuing Bank shall be under no obligation to amend any Letter of Credit if (A) the Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

#### **SECTION 2.19 Defaulting Lenders.**

Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) the Commitment Fee shall cease to accrue on the Commitment of such Lender so long as it is a Defaulting Lender (except to the extent it is payable to the Issuing Bank pursuant to clause (b)(v) below);

(b) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(i) so long as no Default or Event of Default has occurred and is continuing, all or any part of such Swingline Exposure and LC Exposure shall be reallocated among the non-Defaulting Lenders in accordance with their respective Pro Rata Percentages but only to the extent the sum of all non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's Swingline Exposure and LC Exposure does not exceed the total of all non-Defaulting Lenders' Revolving Commitments;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, Borrower shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Defaulting Lender's Swingline Exposure and (y) second, cash collateralize such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.18(i) for so long as such LC Exposure is outstanding;

(iii) if any portion of such Defaulting Lender's LC Exposure is cash collateralized pursuant to clause (ii) above, Borrower shall not be required to pay the LC Participation Fee with respect to such portion of such Defaulting Lender's LC Exposure so long as it is cash collateralized;

(iv) if any portion of such Defaulting Lender's LC Exposure is reallocated to the non-Defaulting Lenders pursuant to clause (i) above, then the LC Participation Fee with respect to such portion shall be allocated among the non-Defaulting Lenders in accordance with their Pro Rata Percentages; or

(v) if any portion of such Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.19(b), then, without prejudice to any rights or remedies of the Issuing Bank or any Lender hereunder, the Commitment Fee that otherwise would have been payable to such Defaulting Lender (with respect to the portion of such Defaulting Lender's Revolving Commitment that was utilized by such LC Exposure) and the LC Participation Fee payable with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until such LC Exposure is cash collateralized and/or reallocated;

(c) so long as any Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders and/or cash collateralized in accordance with Section 2.19(b), and participations in any such newly issued or increased Letter of Credit or newly made Swingline Loan shall be allocated among non-Defaulting Lenders in accordance with their respective Pro Rata Percentages (and Defaulting Lenders shall not participate therein);

(d) such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders; and

(e) any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 2.14(d) but excluding Section 2.16(b)) may, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated non-interest bearing account and, subject to any applicable Requirements of Law, be applied at such time or times as may be determined by the Administrative Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (ii) second, pro rata, to the payment of any amounts owing by such Defaulting Lender to the Issuing Bank or Swingline Lender hereunder, (iii) third, to the funding of any Loan or the funding or cash collateralization of any participation in any Swingline Loan or Letter of Credit in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent, (iv) fourth, if so determined by the Administrative Agent and Borrower, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (v) fifth, pro rata, to the payment of any amounts owing to Borrower or the Lenders as a result of any judgment of a court of competent jurisdiction obtained by Borrower or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement and (vi) sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if such payment is (x) a prepayment of the principal amount of any Loans or Reimbursement Obligations in respect of LC Disbursements which a Defaulting Lender has funded its participation obligations and (y) made at a time when the conditions set forth in Section 4.02 are

satisfied, such payment shall be applied solely to prepay the Loans of, and Reimbursement Obligations owed to, all non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans, or Reimbursement Obligations owed to, any Defaulting Lender.

In the event that the Administrative Agent, Borrower, the Issuing Bank or the Swingline Lender, as the case may be, each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Pro Rata Percentage, whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided further* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. The rights and remedies against a Defaulting Lender under this Section 2.19 are in addition to other rights and remedies that Borrower, the Administrative Agent, the Issuing Bank, the Swingline Lender and the non-Defaulting Lenders may have against such Defaulting Lender. The arrangements permitted or required by this Section 2.19 shall be permitted under this Agreement, notwithstanding any limitation on Liens or the pro rata sharing provisions or otherwise.

#### **SECTION 2.20 Increase in Commitments.**

(a) Borrower Request. Borrower may by written notice to the Administrative Agent elect to request (x) prior to the Revolving Maturity Date, an increase to the existing Revolving Commitments and/or (y) the establishment of one or more new Term Loan Commitments (each, an "**Incremental Term Loan Commitment**") by an amount not in excess of \$75.0 million in the aggregate and (other than increases of Revolving Commitments or the establishment of Incremental Term Loan Commitments using the entire remaining amount of such \$75.0 million) not less than \$25.0 million individually. Each such notice shall specify (i) the date (each, an "**Increase Effective Date**") on which Borrower proposes that the increased or new Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent and (ii) the identity of each person (which must be an Eligible Assignee) to whom Borrower proposes any portion of such increased or new Commitments be allocated and the amounts of such allocations; *provided* that any existing Lender approached to provide all or a portion of the increased or new Commitments may decline, in its sole discretion, to provide such increased or new Commitment.

(b) Conditions. The increased or new Commitments shall become effective, as of such Increase Effective Date; *provided* that:

(i) each of the conditions set forth in Section 4.02 shall be satisfied;

(ii) no Default or Event of Default shall have occurred and be continuing or would result from the borrowings to be made on the Increase Effective Date;

(iii) after giving pro forma effect to the increase in Commitments (assuming all existing Revolving Commitments and any proposed additional Revolving Commitments under this Section 2.20 have been fully drawn) and to any change in Consolidated EBITDA and any increase in Indebtedness resulting from the consummation of any Permitted Acquisition concurrently with such borrowings as of the date of the most recent financial statements delivered pursuant to Section 5.01(a) or Section 5.01(b), (A) Borrower shall be in compliance with the covenant set forth in Section 6.09(a) (irrespective of whether such covenant has been tested as of the most recently ended fiscal period) as of the date of the most recent financial statements delivered pursuant to Section 5.01(a) or Section 5.01(b) and (B) the Senior Secured Leverage Ratio shall not be greater than 2.50 to 1.00;

(iv) Borrower shall make any payments required pursuant to Section 2.13 in connection with any adjustment of Revolving Loans pursuant to Section 2.20(d); and

(v) Borrower shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction.

(c) Terms of New Loans and Commitments. The terms and provisions of Loans made pursuant to the new Commitments shall be as follows:

(i) terms and provisions of Loans made pursuant to Incremental Term Loan Commitments (“**Incremental Term Loans**”) shall be, except as otherwise set forth herein or in the Increase Joinder, identical to the Term Loans (it being understood that Incremental Term Loans may be a part of the Term Loans);

(ii) the terms and provisions of Revolving Loans made pursuant to new Commitments shall be identical to the Revolving Loans;

(iii) the weighted average life to maturity of any Incremental Term Loans shall be no shorter than the weighted average life to maturity of the existing Term Loans;

(iv) the maturity date of Incremental Term Loans (the “**Incremental Term Loan Maturity Date**”) shall not be earlier than the Final Maturity Date;

(v) the Applicable Margins for the Incremental Term Loans shall be determined by Borrower and the Lenders of the Incremental Term Loans; *provided* that in the event that the Applicable Margins for any Incremental Term Loans are greater than the Applicable Margins for the Term Loans by more than 50 basis points, then the Applicable Margins for the Term Loans shall be increased to the extent necessary so that the Applicable Margins for the Incremental Term Loans are no greater than 50 basis points above the Applicable Margins for the Term Loans; *provided, further*, that in determining the Applicable Margins applicable to the Term Loans and the Incremental Term Loans, (x) original issue discount (“**OID**”) or upfront fees (which shall be deemed to constitute like amounts of OID) payable by Borrower to the Lenders of the Term Loans or the Incremental Term Loans in the primary syndication thereof shall be included (with OID being equated to interest based on an assumed four-year life to maturity), (y) customary arrangement or commitment fees payable to the Lead Arrangers (or their affiliates) in connection with the Term Loans or to one or more

arrangers (or their affiliates) of the Incremental Term Loans shall be excluded and (z) any floor for the Adjusted LIBOR Rate or Alternate Base Rate applicable to the Incremental Term Loans that is higher than the respective floor for the Adjusted LIBOR Rate or Alternate Base Rate applicable to the Term Loans shall be equated to an increase in the interest rate margin in the amount of the increase in such floor; and

(vi) to the extent that the terms and provisions of Incremental Term Loans are not identical to the Term Loans (except to the extent permitted by clause (iii), (iv) or (v) above) they shall be reasonably satisfactory to the Administrative Agent.

The increased or new Commitments shall be effected by a joinder agreement (the “**Increase Joinder**”) executed by Borrower, the Administrative Agent and each Lender making such increased or new Commitment, in form and substance satisfactory to each of them. The Increase Joinder may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 2.20. In addition, unless otherwise specifically provided herein, all references in Loan Documents to Revolving Loans or Term Loans shall be deemed, unless the context otherwise requires, to include references to Revolving Loans made pursuant to new Commitments and Incremental Term Loans that are Term Loans, respectively, made pursuant to this Agreement.

(d) Adjustment of Revolving Loans. To the extent the Commitments being increased on the relevant Increase Effective Date are Revolving Commitments, then each Revolving Lender that is acquiring a new or additional Revolving Commitment on the Increase Effective Date shall make a Revolving Loan, the proceeds of which will be used to prepay the Revolving Loans of the other Revolving Lenders immediately prior to such Increase Effective Date, so that, after giving effect thereto, the Revolving Loans outstanding are held by the Revolving Lenders pro rata based on their Revolving Commitments after giving effect to such Increase Effective Date. If there is a new borrowing of Revolving Loans on such Increase Effective Date, the Revolving Lenders after giving effect to such Increase Effective Date shall make such Revolving Loans in accordance with Section 2.01(b).

(e) Making of New Term Loans. On any Increase Effective Date on which new Commitments for Term Loans are effective, subject to the satisfaction of the foregoing terms and conditions, each Lender of such new Commitment shall make a Term Loan to Borrower in an amount equal to its new Commitment.

(f) Equal and Ratable Benefit. The Loans and Commitments established pursuant to this paragraph shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents, except that the new Loans may be subordinated in right of payment or the Liens securing the new Loans may be subordinated, in each case, as set forth in the Increase Joinder. The Loan Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such Term Loans or any such new Commitments.

## **SECTION 2.21 Discounted Voluntary Prepayments.**

(a) Notwithstanding anything to the contrary in this Agreement, the Borrower shall have the right at any time and from time to time to prepay Term Loans at a discount to the par value of such Term Loans (each, a “**Discounted Voluntary Prepayment**”) pursuant to the procedures described in this Section 2.21; *provided that* (A) any Discounted Voluntary Prepayment shall be offered to all Term Loan Lenders on a *pro rata* basis based on the then outstanding principal amount of Term Loans, (B) no Default or Event of Default has occurred and is continuing or would result from the Discounted Voluntary Prepayment, (C) no Discounted Voluntary Prepayment may be made with the proceeds from Revolving Loans or Swingline Loans, (D) at the time of and after giving effect to any Discounted Voluntary Prepayment, the sum of undrawn Revolving Commitments and unrestricted cash and Cash Equivalents of the Borrower and the Guarantors shall not be less than \$40.0 million, (E) Borrower shall in no event deliver more than three Discounted Prepayment Option Notices to the Administrative Agent during the term of this Agreement and (F) Borrower provides a certificate of a Financial Officer certifying (i) as to the items in (B), (C) and (D) above and (ii) that Borrower and its Subsidiaries have no MNPI at the time of the making of the Discounted Voluntary Prepayment that could reasonably be expected to affect a Term Loan Lender’s decision as to whether to participate in the Discounted Voluntary Prepayment.

(b) To the extent the Borrower seeks to make a Discounted Voluntary Prepayment, it will provide written notice to the Administrative Agent substantially in the form of Exhibit R hereto (each, a “**Discounted Prepayment Option Notice**”) that the Borrower desires to prepay the Term Loans in an aggregate principal amount specified therein by the Borrower (each, a “**Proposed Discounted Prepayment Amount**”), in each case at a discount to the par value of such Term Loans as specified below. The Discounted Prepayment Option Notice shall specify with respect to the proposed Discounted Voluntary Prepayment: (A) the Proposed Discounted Prepayment Amount of Term Loans, which shall not be less than \$15.0 million, (B) a discount range (which may be a single percentage) selected by the Borrower with respect to such proposed Discounted Voluntary Prepayment (representing the percentage of par of the principal amount of Term Loans to be prepaid) (the “**Discount Range**”), and (C) the date by which Term Loan Lenders are required to indicate their election to participate in such proposed Discounted Voluntary Prepayment which shall be at least five Business Days following the date of the Discounted Prepayment Option Notice (the “**Acceptance Date**”).

(c) Upon receipt of a Discounted Prepayment Option Notice in accordance with Section 2.21(b), the Administrative Agent shall promptly notify each Lender thereof. On or prior to the Acceptance Date, each such Lender may specify (it being understood and agreed that no Lender shall be required to deliver a Lender Participation Notice or to otherwise make any of its Loans available for purposes of any Discounted Voluntary Prepayment unless it so chooses to deliver a Lender Participation Notice and in such case to make its Term Loans available for a Discounted Voluntary Prepayment pursuant to the terms hereof) by written notice substantially in the form of Exhibit S hereto (each, a “**Lender Participation Notice**”) to the Administrative Agent (A) a minimum price (the “**Acceptable Price**”) within the Discount Range (for example, 80% of the par value of the Term Loans to be prepaid) and (B) a maximum principal amount (subject to rounding requirements specified by the Administrative Agent) of Term Loans with respect to which such Lender is willing to permit a Discounted Voluntary Prepayment at the

Acceptable Price (“**Offered Loans**”) (which, for the avoidance of doubt, need not be any or all of a Term Loan Lender’s Term Loans). Based on the Acceptable Prices and principal amounts of Loans specified by the Lenders in the applicable Lender Participation Notice, the Administrative Agent, in consultation with the Borrower, shall determine the applicable discount for Term Loans (the “**Applicable Discount**”), which Applicable Discount shall be (A) the percentage specified by the Borrower if the Borrower has selected a single percentage pursuant to Section 2.21(b) for the Discounted Voluntary Prepayment or (B) otherwise, the lowest Acceptable Price at which the Borrower can pay the Proposed Discounted Prepayment Amount in full (determined by adding the principal amounts of Offered Loans commencing with the Offered Loans with the lowest Acceptable Price); *provided, however*, that in the event that such Proposed Discounted Prepayment Amount cannot be repaid in full at any Acceptable Price, the Applicable Discount shall be the highest Acceptable Price specified by the Lenders that is within the Discount Range. The Applicable Discount shall be applicable for all Lenders who have offered to participate in the Voluntary Discounted Prepayment and have Qualifying Loans (as defined below). Any Term Loan Lender with outstanding Term Loans whose Lender Participation Notice is not received by the Administrative Agent by the Acceptance Date shall be deemed to have declined to accept a Discounted Voluntary Prepayment of any of its Term Loans at any discount to their par value within the Applicable Discount.

(d) The Borrower shall make a Discounted Voluntary Prepayment by prepaying those Term Loans (or the respective portions thereof) offered by the Term Loan Lenders (“**Qualifying Lenders**”) that specify an Acceptable Price that is equal to or lower than the Applicable Discount (“**Qualifying Loans**”) at the Applicable Discount; *provided* that if the aggregate proceeds required to prepay all Qualifying Loans (disregarding any interest payable at such time) would exceed the amount of aggregate proceeds required to prepay the Proposed Discounted Prepayment Amount, such amounts in each case calculated by applying the Applicable Discount, the Borrower shall prepay such Qualifying Loans ratably among the Qualifying Lenders based on their respective principal amounts of such Qualifying Loans (subject to rounding requirements specified by the Administrative Agent). If the aggregate proceeds required to prepay all Qualifying Loans (disregarding any interest payable at such time) would be less than the amount of aggregate proceeds required to prepay the Proposed Discounted Prepayment Amount, such amounts in each case calculated by applying the Applicable Discount, the Borrower shall prepay all Qualifying Loans.

(e) Each Discounted Voluntary Prepayment shall be made within four Business Days of the Acceptance Date (or such other date as the Administrative Agent shall reasonably agree, given the time required to calculate the Applicable Discount and determine the amount and holders of Qualifying Loans), upon irrevocable notice substantially in the form of Exhibit T hereto (each a “**Discounted Voluntary Prepayment Notice**”), delivered to the Administrative Agent no later than 11:00 a.m. (New York City time), three Business Days prior to the date of such Discounted Voluntary Prepayment, which notice shall specify the date and amount of the Discounted Voluntary Prepayment and the Applicable Discount determined by the Administrative Agent. Upon receipt of any Discounted Voluntary Prepayment Notice, the Administrative Agent shall promptly notify each relevant Lender thereof. If any Discounted Voluntary Prepayment Notice is given, the amount specified in such notice shall be due and payable to the applicable Lenders, subject to the Applicable Discount on the applicable Loans, on the date specified therein together with accrued interest (on the par principal amount) to but



not including such date on the amount prepaid. Prior to the delivery of a Discounted Voluntary Prepayment Notice, upon written notice to the Administrative Agent, the Borrower may withdraw its offer to make a Discounted Voluntary Prepayment pursuant to any Discounted Prepayment Option Notice.

(f) To the extent not expressly provided for herein, each Discounted Voluntary Prepayment shall be consummated pursuant to reasonable procedures (including as to timing, rounding and calculation of Applicable Discount in accordance with Section 2.21(c), above) established by the Administrative Agent in consultation with the Borrower.

(g) Discounted Voluntary Prepayments shall not be taken into consideration in determining Excess Cash Flow or any reductions to Excess Cash Flow in connection with Section 2.10(g).

(h) Discounted Voluntary Prepayments shall be applied to reduce Term Loans in inverse order of maturity, beginning with the Term Loans that are payable on the Term Loan Maturity Date.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders (with references to the Companies being references thereto after giving effect to the Transactions unless otherwise expressly stated) that:

##### **SECTION 3.01 Organization; Powers.**

Each Company (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to carry on its business as now conducted and to own and lease its property and (c) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. There is no existing material default under any Organizational Document of any Company or any event which, with the giving of notice or passage of time or both, would constitute a material default by any party thereunder.

##### **SECTION 3.02 Authorization; Enforceability.**

Each Loan Document to be entered into by each Loan Party, and each of the Transactions, is within such Loan Party's powers and have been duly authorized by all necessary action on the part of such Loan Party. This Agreement has been duly executed and delivered by each Loan Party and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

### **SECTION 3.03 No Conflicts.**

Except as set forth on Schedule 3.03, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created by the Loan Documents, (iii) filings required by the SEC in connection with the sale of the Senior Notes, any registration of the Senior Notes with the SEC that may occur after the date hereof and the entering into of this Agreement and (iv) consents, approvals, registrations, filings, permits or actions the failure to obtain or perform which could not reasonably be expected to result in a Material Adverse Effect, (b) will not violate the Organizational Documents of any Company, (c) will not violate any material Requirements of Law in any material respect, (d) will not violate or result in a default or require any consent or approval under any indenture, agreement or other instrument binding upon any Company or its property, or give rise to a right thereunder to require any payment to be made by any Company, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect, and (e) will not result in the creation or imposition of any Lien on any property of any Company, except Liens created by the Loan Documents and Permitted Liens.

### **SECTION 3.04 Financial Statements; Projections.**

(a) Historical Financial Statements. Borrower has heretofore delivered to the Lenders (i) audited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of (x) Borrower for each of the most recent three fiscal years ending on or before December 31, 2010, audited by and accompanied by the unqualified opinion of PricewaterhouseCoopers LLP, independent public accountants and (y) the Acquired Business for each of the most recent three fiscal years ending more than 60 days prior to the Closing Date, audited by and accompanied by the unqualified opinion of KPMG LLP, independent public accountants and (ii) unaudited consolidated balance sheets and related statements of income and cash flows of each of Borrower and the Acquired Business for each fiscal quarter since the date of the most recent audit for the Borrower and the Acquired Business, as applicable, for the period elapsed from the beginning of the most recent fiscal year to the end of such fiscal quarter and for the comparable periods of the preceding fiscal year (with respect to which the independent auditors have performed a SAS 100 review). Such financial statements and all financial statements delivered pursuant to Sections 5.01(a) and (b) have been prepared in accordance with GAAP and present fairly and accurately the financial condition and results of operations and cash flows of Borrower and the Acquired Business as of the dates and for the periods to which they relate subject (other than with respect to audited annual financial statements) to year-end audit adjustments and the absence of footnotes.

(b) No Liabilities. As of the Closing Date, except as set forth in the financial statements referred to in Section 3.04(a), there are no liabilities of any Company of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which could reasonably be expected to result in a Material Adverse Effect, and there is no existing condition,

situation or set of circumstances which could reasonably be expected to result in such a liability, other than liabilities under the Loan Documents and the Senior Note Documents. Since December 31, 2010, there has been no event, change, circumstance or occurrence that, individually or in the aggregate, has had or could reasonably be expected to result in a Material Adverse Effect.

(c) **Pro Forma Financial Statements.** Borrower has heretofore delivered to the Lenders (i) a *pro forma* consolidated and consolidating balance sheet and related statements of income for Borrower, as well as *pro forma* EBITDA, for the fiscal year ended December 31, 2010 and for the latest four-quarter period ending with the latest period covered by the financial statements referred to in Section 3.04(a)(ii), in each case after giving effect to the Transactions and (ii) forecasts of the financial performance of Borrower and its subsidiaries (x) on an annual basis, through 2018 and (y) on a quarterly basis for the next eight quarters. Such *pro forma* financial statements have been prepared in good faith by the Loan Parties, based on the assumptions stated therein (which assumptions are believed by the Loan Parties on the date hereof and on the Closing Date to be reasonable), are based on the best information available to the Loan Parties as of the date of delivery thereof, accurately reflect all adjustments required to be made to give effect to the Transactions, and in accordance with Regulation S-X, and present fairly in all material respects the *pro forma* consolidated financial position and results of operations of Borrower as of such date and for such periods, assuming that the Transactions had occurred at such dates.

(d) **Forecasts.** The forecasts of financial performance of Borrower and its subsidiaries furnished to the Lenders have been prepared in good faith by Borrower and based on assumptions believed by Borrower to be reasonable at the time made (it being understood that actual results may vary significantly from any such projected or forecasted results).

### **SECTION 3.05 Properties.**

(a) **Generally.** Each Company has good title to, or valid leasehold interests in, all its property material to its business, free and clear of all Liens except for, in the case of Collateral, Permitted Collateral Liens and, in the case of all other material property, Permitted Liens and irregularities or deficiencies in title that, individually or in the aggregate, do not interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose. The property of the Companies, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted), except to the extent that the failure to be in such condition could not be reasonably expected to result in a Material Adverse Effect, and (ii) constitutes all the property which is required for the business and operations of the Companies as presently conducted.

(b) **Real Property.** Schedules 7(a) and 7(b) to the Perfection Certificate dated the Closing Date contain a true and complete list, as of the Closing Date, of each interest in Real Property (i) owned by any Company as of the date hereof and describes the type of interest therein held by such Company and whether such owned Real Property is leased and (ii) leased, subleased or otherwise occupied or utilized by any Company, as lessee, sublessee, franchisee or licensee, as of the date hereof and describes the type of interest therein held by such Company.

(c) **No Casualty Event.** As of the Closing Date, no Company has received any written notice of, nor does any Company have any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any portion of its property. No Mortgage encumbers improved Real Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the National Flood Insurance Act of 1968 unless flood insurance available under such Act has been obtained in accordance with Section 5.04.

(d) **Collateral.** Each Company owns or has rights to use all of the Collateral and all rights with respect to any of the foregoing used in, necessary for or material to each Company's business as currently conducted. The use by each Company of such Collateral and all such rights with respect to the foregoing do not infringe on the rights of any person other than such infringement which could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No claim has been made and remains outstanding that any Company's use of any Collateral does or may violate the rights of any third party that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

### **SECTION 3.06 Intellectual Property.**

(a) **Ownership/No Claims.** Each Company owns, or is licensed to use, all patents, patent applications, trademarks, trade names, service marks, copyrights, trade secrets, proprietary information, domain names, know-how and processes necessary for the conduct of its business as currently conducted (the "**Intellectual Property**"), except for those the failure to own or license which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No claim has been asserted and is pending by any person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property except, in any such case, for any claim that could not reasonably be expected to result in a Material Adverse Effect. The use of such Intellectual Property by each Company does not infringe the rights of any person, no claims asserting such infringement are pending by any person and to each Loan Party's knowledge no valid basis exists for such a claim, except for such claims and infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) **Registrations.** Schedule 11(a) and 11(b) to the Perfection Certificate list as of the date hereof each patent, trademark registration, copyright registration and any application for issuance or registration of the same included in the Collateral and each license or other agreement entered into by any Loan Party granting any right to use or authorize or enable any other person to use any patent, trademark or copyright included in the Collateral. Each such patent, trademark registration and copyright registration listed in Schedule 11(a) and 11(b) to the Perfection Certificate is valid, subsisting and in full force and effect as of the date hereof.

(c) **No Violations or Proceedings.** To each Loan Party's knowledge, on and as of the date hereof, there is no material violation by others of any right of such Loan Party with respect to any copyright, patent or trademark listed in Schedule 11(a) or 11(b) to the Perfection Certificate, pledged by it under the name of such Loan Party except as may be set forth on Schedule 3.06(c).

### **SECTION 3.07 Equity Interests and Subsidiaries.**

(a) Equity Interests. Schedules 1(a) and 9(a) to the Perfection Certificate dated the Closing Date set forth a list, as of the Closing Date, of (i) all the Subsidiaries of Borrower and their jurisdictions of organization as of the Closing Date and (ii) the number of each class of its Equity Interests outstanding, in each case, on the Closing Date. All Equity Interests of each Company are duly and validly issued and, in the case of each entity that is a corporation, are fully paid and non-assessable, and, other than the Equity Interests of Borrower, are owned by Borrower, directly or indirectly through Wholly Owned Subsidiaries. Each Loan Party is the record and beneficial owner of, and has good and marketable title to, the Equity Interests pledged by it under the Security Agreement, free of any and all Liens, rights or claims of other persons, except the security interest created by the Security Agreement, and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Equity Interests.

(b) No Consent of Third Parties Required. No consent of any person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary or reasonably desirable (from the perspective of a secured party) in connection with the creation, perfection or first priority status of the security interest of the Collateral Agent in any Equity Interests pledged to the Collateral Agent for the benefit of the Secured Parties under the Security Agreement or the exercise by the Collateral Agent of the voting or other rights provided for in the Security Agreement or the exercise of remedies in respect thereof.

(c) Organizational Chart. An accurate organizational chart, showing the ownership structure of Borrower and each Subsidiary on the Closing Date, and after giving effect to the Transactions, is set forth on Schedule 9(c) to the Perfection Certificate dated the Closing Date.

### **SECTION 3.08 Litigation; Compliance with Laws.**

There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the knowledge of any Company, threatened against or affecting any Company or any business, property or rights of any Company (i) that involve any Loan Document or any of the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Except for matters covered by Section 3.18, no Company or any of its property is in violation of any Requirements of Law or any restrictions of record or agreements affecting any Company's Real Property or is in default with respect to any Requirements of Law, where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.09 Reserved.**

**SECTION 3.10 Federal Reserve Regulations.**

No Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock. No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T, U or X. The pledge of the Securities Collateral pursuant to the Security Agreement does not violate such regulations.

**SECTION 3.11 Investment Company Act.**

No Company is an “investment company” or a company “controlled” by an “investment company,” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

**SECTION 3.12 Use of Proceeds.**

Borrower will use the proceeds of (a) the Term Loans made on the Closing Date to effect the Merger and the Refinancing and pay related fees and expenses, (b) any Incremental Term Loans for the purposes specified in the Increase Joinder and (c) the Revolving Loans and Swingline Loans on and after the Closing Date for general corporate purposes (including to effect Permitted Acquisitions) not to exceed \$10.0 million on the Closing Date.

**SECTION 3.13 Taxes.**

Each Company has (a) timely filed or caused to be timely filed all federal Tax Returns and all material state, local and foreign Tax Returns required to have been filed by it and all such Tax Returns are true and correct in all material respects, (b) duly and timely paid, collected or remitted or caused to be duly and timely paid, collected or remitted all material Taxes (whether or not shown on any Tax Return) due and payable, collectible or remittable by it and all assessments received by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Company has set aside on its books adequate reserves in accordance with GAAP and (c) satisfied all of its material withholding tax obligations. Each Company has made adequate provision in accordance with GAAP for all material Taxes not yet due and payable. Each Company is unaware of any proposed or pending Tax assessments, deficiencies or audits that could be reasonably expected to, individually or in the aggregate, result in a Material Adverse Effect. No Company has ever “participated” in a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4.

**SECTION 3.14 No Material Misstatements.**

No written information, report, financial statement, certificate, Borrowing Request, LC Request, exhibit or schedule furnished by or on behalf of any Company to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto, taken as a whole, or the Confidential Information

Memorandum, other than forward looking information and information of a general economic or industry nature, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, when taken as a whole in the light of the circumstances under which they were or are made, not misleading as of the date such information is dated or certified; *provided* that to the extent any such written information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, each Company represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule (it being understood that actual results may vary significantly from any such projected or forecasted results).

**SECTION 3.15 Labor Matters.**

As of the Closing Date, there are no strikes, lockouts or slowdowns against any Company pending or, to the knowledge of any Company, threatened. The hours worked by and payments made to employees of any Company have not been in violation of the Fair Labor Standards Act of 1938, as amended, or any other applicable federal, state, local or foreign law dealing with such matters in any manner which, in each case, could reasonably be expected to result in a Material Adverse Effect. All payments due from any Company, or for which any claim may be made against any Company, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Company except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Company is bound.

**SECTION 3.16 Solvency.**

Immediately after the consummation of the Transactions to occur on the Closing Date and immediately following the making of each Loan and after giving effect to the application of the proceeds of each Loan, (a) the fair value of the assets of each Loan Party (individually and on a consolidated basis with its Subsidiaries), at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of each Loan Party (individually and on a consolidated basis with its Subsidiaries) will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) each Loan Party (individually and on a consolidated basis with its Subsidiaries) will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) each Loan Party (individually and on a consolidated basis with its Subsidiaries) will not have unreasonably small capital with which to conduct its business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

For purposes of this representation, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability, and any subrogation and/or contribution rights will be considered in determining the amount of such liability.

### **SECTION 3.17 Employee Benefit Plans.**

Each Plan is in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in a Material Adverse Effect on any Company or any of its ERISA Affiliates or the imposition of a Lien on any of the property of any Company. Except as set forth on Schedule 3.17, the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$500,000 the fair market value of the property of all such underfunded Plans. Using actuarial assumptions and computation methods consistent with subpart I of subtitle E of Title IV of ERISA, the aggregate liabilities of each Company or its ERISA Affiliates to all Multiemployer Plans in the event of a complete withdrawal therefrom, as of the close of the most recent fiscal year of each such Multiemployer Plan, could not reasonably be expected to result in a Material Adverse Effect.

### **SECTION 3.18 Environmental Matters.**

(a) Except as set forth in Schedule 3.18 or as, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect:

(i) The Companies and their businesses, operations and Real Property are in compliance with, and the Companies have no liability under, any applicable Environmental Law; and under the currently effective business plan of the Companies, no expenditures or operational adjustments will be required in order to comply with applicable Environmental Laws during the next five years;

(ii) The Companies have obtained all Environmental Permits required for the conduct of their businesses and operations, and the ownership, operation and use of their property. All such Environmental Permits are valid and in good standing and, under the currently effective business plan of the Companies, no expenditures or operational adjustments will be required in order to renew or modify such Environmental Permits prior to the Final Maturity Date;

(iii) There has been no Release or threatened Release of Hazardous Material on, at, under or from any Real Property or facility presently or formerly owned, leased or operated by the Companies or their predecessors in interest that could result in liability by the Companies under any applicable Environmental Law;

(iv) There is no Environmental Claim pending or, to the knowledge of the Companies, threatened against the Companies, or relating to the Real Property currently or formerly owned, leased or operated by the Companies or their predecessors in interest or relating to the operations of the Companies, and there are no actions, activities, circumstances, conditions, events or incidents that could form the basis of such an Environmental Claim;



(v) No person with an indemnity or contribution obligation to the Companies relating to compliance with or liability under Environmental Law is in default with respect to such obligation;

(vi) No Company is obligated to perform any action or otherwise incur any expense under Environmental Law pursuant to any order, decree, judgment or agreement by which it is bound or has assumed by contract, agreement or operation of law, and no Company is conducting or financing any Response pursuant to any Environmental Law with respect to any Real Property or any other location;

(vii) No Real Property or facility owned, operated or leased by the Companies and, to the knowledge of the Companies, no Real Property or facility formerly owned, operated or leased by the Companies or any of their predecessors in interest is (i) listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA or (ii) listed on the Comprehensive Environmental Response, Compensation and Liability Information System promulgated pursuant to CERCLA or (iii) included on any similar list maintained by any Governmental Authority including any such list relating to petroleum;

(viii) No Lien has been recorded or, to the knowledge of any Company, threatened under any Environmental Law with respect to any Real Property or other assets of the Companies; and

(ix) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not require any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup pursuant to any Governmental Real Property Disclosure Requirements or any other applicable Environmental Law.

### **SECTION 3.19 Insurance.**

Each Company has insurance in such amounts and covering such risks and liabilities as are customary for companies of a similar size engaged in similar businesses in similar locations. Schedule 3.19 sets forth a true, complete and correct description of all insurance maintained by each Company as of the Closing Date. All insurance maintained by the Companies is in full force and effect, all premiums have been duly paid, no Company has received notice of violation or cancellation thereof, the Premises, and the use, occupancy and operation thereof, comply in all material respects with all Insurance Requirements, and there exists no default under any Insurance Requirement.

### **SECTION 3.20 Security Documents.**

(a) Security Agreement. The Security Agreement is effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Security Agreement Collateral and, when (i) financing statements and other filings in appropriate form are filed in the offices specified on Schedule 6 to the Perfection Certificate and (ii) upon the taking of possession or control by the Collateral Agent of the Security Agreement Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the

extent possession or control by the Collateral Agent is required by each Security Agreement), 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 Security Agreement Collateral to the extent that such Liens and security interests can be perfected under the UCC by the filing of financing statements (other than fixture filings) and the taking of possession or control (excluding Collateral as to which the provision of possession or control is not required under the Security Agreement), in each case subject to no Liens other than Permitted Collateral Liens.

(b) PTO Filing; Copyright Office Filing. Upon the execution and delivery of the Security Agreement, the filing of an appropriate financing statement and the filing of a notice of security interest in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, the Liens created by such Security Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the grantors thereunder in Copyrights, Trademarks and Patents (each as defined in the Security Agreement) registered or applied for with the United States Copyright Office and the United States Patent and Trademark Office, as the case may be, in each case subject to no Liens other than Permitted Liens.

(c) Mortgages. Each Mortgage, when recorded in the appropriate filing office, is or shall be effective to create, in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, legal, valid and enforceable first priority perfected Liens on, and security interests in, all of the Loan Parties' right, title and interest in and to the Mortgaged Properties described therein and the proceeds thereof, subject only to Permitted Collateral Liens or other Liens acceptable to the Collateral Agent.

(d) Valid Liens. Each Security Document delivered pursuant to Sections 5.11, 5.12 and 5.14 will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Loan Parties' right, title and interest in and to the Collateral thereunder, and (i) when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable law and (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent required by any Security Document), such Security Document will constitute fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in such Collateral, in each case subject to no Liens other than the applicable Permitted Collateral Liens.

### **SECTION 3.21 Acquisition Documents**

Schedule 3.21 lists (i) each exhibit, schedule, annex or other attachment to the Acquisition Agreement and (ii) each material agreement, certificate, instrument, letter or other document contemplated by the Acquisition Agreement or any item referred to in clause (i) to be entered into, executed or delivered or to become effective in connection with the Merger or otherwise entered into, executed or delivered in connection with the Merger. The Lenders have been furnished true and complete copies of each Acquisition Document to the extent executed and delivered on or prior to the Closing Date.

**SECTION 3.22 Anti-Terrorism and Anti-Money Laundering Laws.**

(a) No Loan Party, none of its Subsidiaries and, to the knowledge of each Loan Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Loan Party, such Subsidiary or Affiliate (i) has violated or is in violation of Anti-Terrorism Laws or Anti-Money Laundering Laws or (ii) has been convicted of, has been charged with, or is under investigation by, a Governmental Authority for violations of Anti-Terrorism Laws, Anti-Money Laundering Laws or any other Requirements of Law.

(b) The Loan Parties maintain, and will continue to maintain, an export control and trade sanctions compliance program that includes appropriate measures to monitor compliance with applicable export control, trade sanctions, and corrupt practices statutes and regulations sufficient to provide reasonable assurances that the funds used by the Loan Parties to make payments hereunder to the Agents, the Issuing Bank or the Lenders will not be derived from activities that violate Anti-Terrorism Laws, Anti-Money Laundering or any other Requirements of Law and shall not constitute property of, or be beneficially owned directly or indirectly by, an Embargoed Person.

(c) No Loan Party, none of its Subsidiaries and, to the knowledge of each Loan Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Loan Party, such Subsidiary or such Affiliate is acting or benefiting in any capacity in connection with the Loans is an Embargoed Person, is a shell bank or is subject to special measures because of money laundering concerns under Section 311 of the USA PATRIOT Act and its implementing regulations.

(d) No Loan Party, none of its Subsidiaries and, to the knowledge of each Loan Party, none of its Affiliates and none of the respective officers, directors, brokers or agents of such Loan Party, such Subsidiary or such Affiliate acting or benefiting in any capacity in connection with the Loans (i) has in the past five (5) years conducted or currently conducts any business or has in the past five (5) years engaged in or currently engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any Anti-Terrorism Law.

**SECTION 3.23 Foreign Corrupt Practices.**

In the past five years, neither any Loan Party nor any of its Subsidiaries, nor any director, officer, or employee, nor, to such Loan Party's knowledge, any agent or representative acting directly or indirectly on behalf of the Loan Party or any of its Subsidiaries, has taken or will take any unlawful action in furtherance of a corrupt offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper

advantage. Each Loan Party and its Subsidiaries have conducted their businesses in material compliance with applicable anti-corruption laws and have instituted and maintained and will continue to maintain policies designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

## ARTICLE IV

### CONDITIONS TO CREDIT EXTENSIONS

#### **SECTION 4.01 Conditions to Initial Credit Extension.**

The obligation of each Lender and, if applicable, each Issuing Bank to fund the initial Credit Extension requested to be made by it shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 4.01.

(a) Loan Documents. There shall have been delivered to the Administrative Agent an executed counterpart of each of the Loan Documents and an executed Perfection Certificate with schedules.

(b) Corporate Documents. The Administrative Agent shall have received:

(i) a certificate of the secretary or assistant secretary of each Loan Party dated the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of such Loan Party certified (to the extent applicable) as of a recent date by the Secretary of State of the state of its organization, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party (together with a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate in this clause (i)); and

(ii) a certificate as to the good standing of each Loan Party as of a recent date, from such Secretary of State (or other applicable Governmental Authority).

(c) Officers' Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by the chief executive officer and the chief financial officer of Borrower, confirming compliance with the conditions precedent set forth in this Section 4.01 (to the extent not subject to the discretion of an Arranger, the Administrative Agent, or such other person other than a Company) and Section 4.02(c).

(d) Financings and Other Transactions, etc.

(i) The Merger and the other Transactions shall have been consummated or shall be consummated substantially concurrently on the Closing Date, in each case in accordance with the terms hereof and the terms of the Acquisition Agreement, without any waiver or amendment thereof or consent thereof that would materially adversely affect the Arrangers (it being understood and agreed that (a) any change in the purchase price and/or (b) any waiver or amendment of any condition contained in the Acquisition Agreement regarding any rejection or disapproval by the SEC of any of the material terms or conditions of that certain Offer of Settlement of the Acquired Business executed by the Acquired Business on March 18, 2011, is deemed to materially adversely affect the Arrangers) unless consented to by the Arrangers.

(ii) Borrower shall have received \$200.0 million in gross proceeds from the issuance and sale of the Senior Notes to an institution acceptable to the Arrangers (as such amount may be reduced by underwriting fees or any issuance of the Senior Notes with OID).

(iii) The Refinancing shall have been consummated in full to the satisfaction of the Lenders with all liens in favor of the existing lenders being unconditionally released; the Administrative Agent shall have received "pay-off" letters in form and substance reasonably satisfactory to the Administrative Agent with respect to all debt being refinanced in the Refinancing; and the Administrative Agent shall have received such UCC termination statements, mortgage releases, releases of assignments of leases and rents, releases of security interests in Intellectual Property and other instruments, in each case in proper form for recording, as the Administrative Agent shall have reasonably requested to release and terminate of record the Liens securing such debt.

(e) Financial Statements; Pro Forma Balance Sheet; Projections. The Lenders shall have received the financial statements and forecasts described in Section 3.04.

(f) Indebtedness and Minority Interests. After giving effect to the Transactions and the other transactions contemplated hereby, no Company (including, for the avoidance of doubt, the Acquired Business and its Subsidiaries) shall have outstanding any Indebtedness for borrowed money or Preferred Stock other than (i) the Loans and Credit Extensions hereunder, (ii) the Senior Notes, (iii) the Indebtedness listed on Schedule 6.01(b) and (iv) Indebtedness owed to Borrower or any Guarantor.

(g) Opinions of Counsel. The Administrative Agent shall have received a favorable written opinion of (i) Gibson, Dunn & Crutcher LLP, special counsel for the Loan Parties, (ii) each local counsel listed on Schedule 4.01(g), in each case (A) dated the Closing Date, (B) addressed to the Arrangers, the Agents, the Issuing Bank and the Lenders and (C) covering such matters relating to the Loan Documents and the Transactions as the Administrative Agent shall reasonably request.

(h) Solvency Certificate. The Administrative Agent shall have received a solvency certificate in substance reasonably satisfactory to the Administrative Agent and in the form of Exhibit O, dated the Closing Date and signed by the chief financial officer of Borrower or, in lieu thereof, at the option of Borrower, a written opinion, in form and substance and from an independent investment banking or appraisal firm reasonably satisfactory to the Administrative Agent, as to the solvency of each of the Loan Parties after giving effect to the Transactions.

(i) Reserved.

(j) Consents. To the extent required by the Acquisition Agreement, all necessary governmental and material third party approvals in connection with the Transactions shall have been obtained and shall be in effect or any such requirement shall be waived in accordance with the Acquisition Agreement (other than any such approvals, the failure of which to obtain could not reasonably be expected to materially adversely affect (in the Arrangers' reasonable determination) the interests of the Arrangers or as approved in writing by the Arrangers). Without limiting the foregoing, to the extent required by the Acquisition Agreement, all requisite shareholder approvals and consents required by applicable law or the transactional documents with respect to the Acquisition Agreement and the governing documents of Borrower necessary to effect the Merger shall have been obtained and shall be in full force and effect.

(k) Reserved.

(l) Reserved.

(m) Fees. The Arrangers, Administrative Agent, the Collateral Agent and the Lenders shall have received all Fees, all fees payable pursuant to the Fee Letter and all other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced on or before the Business Day prior to the Closing Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses (including the reasonable legal fees and expenses of Latham & Watkins LLP, special counsel to the Agents, and the fees and expenses of a single local counsel in each jurisdiction determined to be reasonably necessary or advisable by the Arrangers) required to be reimbursed or paid by Borrower hereunder or under any other Loan Document or the Commitment Letter.

(n) Personal Property Requirements. The Collateral Agent shall have received:

(i) all certificates, agreements or instruments representing or evidencing the Securities Collateral, accompanied by instruments of transfer and stock powers (as applicable), undated and endorsed in blank (it being understood that the Equity Interests required to be delivered to the Collateral Agent shall be limited, in the case of any Foreign Subsidiary, to (A) Voting Stock of any Subsidiary which is a controlled foreign corporation (as defined in Section 957(a) of the Code) representing 65% of the total voting power of all outstanding Voting Stock of such Subsidiary and (B) 100% of the Equity Interests of any Foreign Subsidiary not constituting Voting Stock of any such controlled foreign corporation (as defined in Section 957(a) of the Code);

(ii) the Intercompany Note executed by and among Borrower and each of its Subsidiaries, accompanied by instruments of transfer undated and endorsed in blank;

(iii) all other certificates, agreements, including Control Agreements, or instruments necessary to perfect the Collateral Agent's security interest in all Chattel Paper, all Instruments, all Deposit Accounts and all Investment Property of each Loan Party (as each such term is defined in the Security Agreement and to the extent required by the Security Agreement);

(iv) UCC financing statements in appropriate form for filing under the UCC, filings with the United States Patent and Trademark Office and United States Copyright Office and such other documents under applicable Requirements of Law in each jurisdiction as may be necessary or appropriate or, in the opinion of the Collateral Agent, desirable to perfect the Liens created, or purported to be created, by the Security Documents;

(v) certified copies of UCC, United States Patent and Trademark Office and United States Copyright Office, tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Loan Party as debtor and that are filed in those state and county jurisdictions in which any Loan Party is organized or maintains its chief executive office and such other searches that are required by the Perfection Certificate or that the Collateral Agent deems necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Security Documents (other than Permitted Collateral Liens or any other Liens acceptable to the Collateral Agent);

(vi) with respect to each location set forth on Schedule 4.01(n)(vi), a Landlord Access Agreement or Bailee Letter, as applicable; *provided* that no such Landlord Access Agreement or Bailee Letter shall be required with respect to any Real Property that could not be obtained after the Loan Party that is the lessee of such Real Property or owner of the inventory or other personal property Collateral stored with the bailee thereof, as applicable, shall have used all commercially reasonable efforts to do so; and

(vii) evidence acceptable to the Collateral Agent of payment or arrangements for payment by the Loan Parties of all applicable recording taxes, fees, charges, costs and expenses required for the recording of the Security Documents.

Notwithstanding the foregoing, with respect to any Collateral the security interest in which may not be perfected by filing of an intellectual property security agreement with the United States Patent and Trademark Office or United States Copyright Office, as the case may be, filing of a UCC financing statement, or possession of such Collateral, if the perfection of the Collateral Agent's security interest in such Collateral may not be accomplished on or prior to the Closing Date without undue burden or expense or after Borrower's use of commercially reasonable efforts to do so, then delivery of such information or the documents and instruments for perfection of such security interest shall not constitute a condition precedent to the initial Credit Extension. Borrower agrees to take the actions set forth on Schedule 5.14 with respect to such information, documents and instruments not delivered on or prior to the Closing Date.

(o) Real Property Requirements. The Collateral Agent shall have received:

(i) a Mortgage encumbering each Mortgaged Property in favor of the Collateral Agent, for the benefit of the Secured Parties, duly executed and acknowledged by each Loan Party that is the owner of or holder of any interest in such Mortgaged Property, and otherwise in form for recording in the recording office of each applicable political subdivision where each such Mortgaged Property is situated, together with such certificates, affidavits, questionnaires or returns as shall be required in connection with the recording or filing thereof to create a lien under applicable Requirements of Law, and such financing statements and any other instruments necessary to grant a mortgage lien under the laws of any applicable jurisdiction, all of which shall be in form and substance reasonably satisfactory to Collateral Agent;

(ii) with respect to each Mortgaged Property, such consents, approvals, amendments, supplements, estoppels or other instruments as necessary to consummate the Transactions or as shall reasonably be deemed necessary by the Collateral Agent in order for the owner or holder of the fee constituting such Mortgaged Property to grant the Lien contemplated by the Mortgage with respect to such Mortgaged Property;

(iii) with respect to each Mortgage, a policy of title insurance (or marked up title insurance commitment having the effect of a policy of title insurance) insuring the Lien of such Mortgage as a valid first mortgage Lien (subject to Permitted Collateral Liens) on the Mortgaged Property and fixtures described therein in the amount equal to not less than 115% of the fair market value of such Mortgaged Property and fixtures, which fair market value is set forth on Schedule 4.01(o)(iii), which policy (or such marked-up commitment) (each, a “**Title Policy**”) shall (A) be issued by the Title Company, (B) to the extent necessary, include such reinsurance arrangements (with provisions for direct access, if necessary) as shall be reasonably acceptable to the Collateral Agent, (C) contain a “tie-in” or “cluster” endorsement, if available under applicable law (*i.e.*, policies which insure against losses regardless of location or allocated value of the insured property up to a stated maximum coverage amount), (D) have been supplemented by such endorsements (or where such endorsements are not available, opinions of special counsel, architects or other professionals reasonably acceptable to the Collateral Agent) as shall be reasonably requested by the Collateral Agent (including endorsements on matters relating to usury, first loss, last dollar, zoning, contiguity, revolving credit, doing business, non-imputation, public road access, survey, variable rate, environmental lien, subdivision, mortgage recording tax, separate tax lot, and so-called comprehensive coverage over covenants and restrictions), and (E) contain no exceptions to title other than exceptions reasonably acceptable to the Collateral Agent;

(iv) with respect to each Mortgaged Property, such affidavits, certificates, information (including financial data) and instruments of indemnification (including a so-called “gap” indemnification) as shall be required to induce the Title Company to issue the Title Policy/ies and endorsements contemplated above;

(v) evidence reasonably acceptable to the Collateral Agent of payment by Borrower of all Title Policy premiums, search and examination charges, escrow charges and related charges, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgages and issuance of the Title Policies referred to above;

(vi) with respect to each Mortgaged Property, copies of all Leases in which Borrower or any Subsidiary holds the lessor’s interest or other agreements relating to possessory interests, if any;

(vii) with respect to each Mortgaged Property, each Company shall have made all notifications, registrations and filings, to the extent required by, and in accordance with, all Governmental Real Property Disclosure Requirements applicable to such Mortgaged Property;



(viii) Surveys with respect to each Mortgaged Property; and

(ix) a completed Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property.

Notwithstanding the foregoing, if the perfection of the Collateral Agent's security interest in any Mortgaged Property may not be accomplished on or prior to the Closing Date without undue burden or expense or after Borrower's use of commercially reasonable efforts to do so, then delivery of documents and instruments for perfection of such security interest in any Mortgaged Property shall not constitute a condition precedent to the initial Credit Extension. Borrower agrees to take the actions set forth on Schedule 5.14 with respect to such information, documents and instruments not delivered on or prior to the Closing Date.

(p) Insurance. The Administrative Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.04 and the applicable provisions of the Security Documents, each of which shall be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable or mortgagee endorsement (as applicable) and shall name the Collateral Agent, on behalf of the Secured Parties, as additional insured, in form and substance satisfactory to the Administrative Agent.

(q) USA PATRIOT Act. The Lenders and the Administrative Agent shall have received from the Borrower and each of the Guarantors, at least five (5) Business Days prior to the Closing Date, all documentation and other information that may be required by the Lenders in order to enable compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the information and any documentation required under Section 10.13.

(r) Reserved.

(s) Accuracy of Acquisition Agreement Representations and Specified Representations. The representations made by the Acquired Business in the Acquisition Agreement that are material to the interests of the Lenders but only to the extent that Borrower or Merger Subsidiary has the right to terminate its obligations under the Acquisition Agreement as a result of a breach of such representations in the Acquisition Agreement (the "**Acquisition Agreement Representations**") and (B) the Specified Representations (as defined below), shall be true and correct in all material respects on and as of the Closing Date with the same effect as though made on and as of such date (except (x) to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date and (y) to the extent any such representation and warranty is qualified as to "materiality" or "Material Adverse Effect", in which case it shall be true and correct in all respects). For purposes hereof, "**Specified Representations**" means the representations and warranties relating to Borrower, the Acquired Business, their Subsidiaries and their businesses set forth in Sections 3.01, 3.02, 3.03(a), 3.03(b), 3.03(c), 3.05(a) (first sentence and as to Collateral only), 3.07 (as to ownership of Equity Interests that constitute Collateral only), 3.10, 3.11, 3.16, 3.20 and 3.22 (but only to the extent relating to Collateral in which a Lien in favor of the Collateral Agent is required to be perfected by the Closing Date pursuant to clauses (n) and (o) above).

(t) No Material Adverse Change. There shall not have been any Material Adverse Change with respect to the Acquired Business and its Subsidiaries since January 2, 2011.

**SECTION 4.02 Conditions to All Credit Extensions.**

The obligation of each Lender and each Issuing Bank to make any Credit Extension (including the initial Credit Extension) shall be subject to, and to the satisfaction of, each of the conditions precedent set forth below.

(a) Notice. The Administrative Agent shall have received a Borrowing Request as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) if Loans are being requested or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received an LC Request as required by Section 2.18(b) or, in the case of the Borrowing of a Swingline Loan, the Swingline Lender and the Administrative Agent shall have received a Borrowing Request as required by Section 2.17(b).

(b) No Default. At the time of and immediately after giving effect to such Credit Extension (other than the initial Credit Extension) and the application of the proceeds thereof, no Default or Event of Default shall have occurred and be continuing on such date.

(c) Representations and Warranties. Each of the representations and warranties made by any Loan Party set forth in Article III hereof or in any other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects (subject to such "materiality" or "Material Adverse Effect" qualifier)) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date; provided that the only representations relating to the Borrower, the Acquired Business, their Subsidiaries and their businesses the accuracy of which shall be a condition to the initial Credit Extension shall be the Acquisition Agreement Representations and the Specified Representations.

(d) No Legal Bar.

(i) No order, judgment or decree of any Governmental Authority shall purport to restrain any Lender from making any Loans to be made by it.

(ii) No injunction or other restraining order shall have been issued, shall be pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated by this Agreement or the making of Loans hereunder.

(e) Pro Forma Financial Covenant Compliance. After the Closing Date and solely in connection with any Credit Extension that utilizes any Revolving Commitments, (1) the Borrower shall be in compliance on a Pro Forma Basis (including balance sheet amounts after giving pro forma effect to any requested Credit Extension) with Section 6.09(a) (irrespective of whether such financial covenant has been tested for the most recently ended Test Period) and (2) solely with respect to Credit Extensions made prior to the time when financial statements for the Test Period ending October 1, 2011 are available, the maximum Total Leverage Ratio (calculated on a Pro Forma Basis and including balance sheet amounts after giving pro forma effect to any requested Credit Extension) shall not exceed 5.25 to 1.0.

Each of the delivery of a Borrowing Request or an LC Request and the acceptance by Borrower of the proceeds of such Credit Extension shall constitute a representation and warranty (which, in the case of clause (i) of Section 4.02(d), shall be limited to the knowledge of the Borrower) by Borrower and each other Loan Party that on the date of such Credit Extension (both immediately before and after giving effect to such Credit Extension and the application of the proceeds thereof) the conditions contained in Sections 4.02(b)-(e) have been satisfied (it being understood that Sections 4.02(d) and (e) shall not be tested on the Closing Date). Borrower shall provide such information (including calculation in reasonable detail of the covenants in Section 6.09) as the Administrative Agent may reasonably request to confirm that the conditions in Sections 4.02(b)-(e) have been satisfied.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Each Loan Party warrants, covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, each Loan Party will, and will cause each of its Subsidiaries to:

#### **SECTION 5.01 Financial Statements, Reports, etc.**

Furnish to the Administrative Agent and each Lender:

(a) Annual Reports. As soon as available and in any event within 90 days (or such earlier date on which Borrower is required to file a Form 10-K under the Exchange Act) after the end of each fiscal year, beginning with the fiscal year ending December 31, 2011, (i) the consolidated balance sheet of Borrower as of the end of such fiscal year and related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, in comparative form with such financial statements as of the end of, and for, the preceding fiscal year, and notes thereto, all prepared in accordance with GAAP and accompanied by an opinion of PricewaterhouseCoopers LLC or other independent public accountants of recognized national standing (which opinion shall not be qualified as to scope (other than any customary qualifications in respect of businesses, operations or persons acquired pursuant to a Permitted Acquisition for periods prior to the consummation of such Permitted Acquisition) or contain any explanatory paragraph expressing substantial doubt about the ability of the Borrower to continue as a going concern), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower as of the dates and for the periods specified in accordance with GAAP, (ii) a management report setting forth customary information with respect to project backlog and (iii) a narrative report and

management's discussion and analysis of the financial condition and results of operations of Borrower for such fiscal year, as compared to amounts for the previous fiscal year (it being understood that the information required by clause (i) and (iii), and, to the extent contained therein, clause (ii), may be furnished in the form of a Form 10-K);

(b) Quarterly Reports. As soon as available and in any event within 45 days (or such earlier date on which Borrower is required to file a Form 10-Q under the Exchange Act) after the end of each of the first three fiscal quarters of each fiscal year, beginning with the fiscal quarter ending July 2, 2011, (i) the consolidated balance sheet of Borrower as of the end of such fiscal quarter and related consolidated statements of income and cash flows for such fiscal quarter and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year (provided that with respect to any fiscal quarter that ends on or prior to the first anniversary of the Closing Date, the foregoing requirement that such financial statements be presented in comparative form shall only apply to the extent financial statements of Borrower or the Acquired Business exist for such comparable periods in the previous fiscal year), and notes thereto, all prepared in accordance with GAAP and accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower as of the date and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with audited financial statements referred to in clause (a) of this Section, subject to normal year-end audit adjustments, (ii) a management report setting forth customary information with respect to project backlog, and (iii) a narrative report and management's discussion and analysis, of the financial condition and results of operations for such fiscal quarter and the then elapsed portion of the fiscal year, as compared to the comparable periods in the previous fiscal year (it being understood that the information required by clause (i) and (iii), and, to the extent contained therein, clause (ii), may be furnished in the form of a Form 10-Q);

(c) Reserved;

(d) Financial Officer's Certificate. (i) Concurrently with any delivery of financial statements under Section 5.01(a) or (b), a Compliance Certificate (A) certifying that no Default has occurred or, if such a Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, (B) beginning with the fiscal quarter ending October 1, 2011, setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the financial covenants contained in Section 6.09(a) (unless such financial covenant is not being tested during the relevant fiscal quarter, in which case, a certification as to the fact that the covenant in Section 6.09(a) is not required to be tested during such fiscal quarter) and 6.09(c) and, concurrently with any delivery of financial statements under Section 5.01(a) above, demonstrating compliance with Section 6.09(b) (beginning with the fiscal year ending December 31, 2011) and Borrower's calculation of Excess Cash Flow (beginning with the fiscal year ending December 31, 2012) and (C) showing how Consolidated EBITDA was calculated for such period; and (ii) concurrently with any delivery of financial statements under Section 5.01(a) above, beginning with the fiscal year ending December 31, 2011, a report of the accounting firm opining on or certifying such financial statements stating that in the course of its regular audit of the financial statements of Borrower and its Subsidiaries, which audit was conducted in accordance with generally accepted

auditing standards, such accounting firm obtained no knowledge that any Default insofar as it relates to financial or accounting matters has occurred or, if in the opinion of such accounting firm such a Default has occurred, specifying the nature and extent thereof;

(e) Financial Officer's Certificate Regarding Collateral. Concurrently with any delivery of financial statements under Section 5.01(a), a certificate of a Financial Officer setting forth the information required pursuant to the Perfection Certificate Supplement or confirming that there has been no change in such information since the date of the Perfection Certificate or latest Perfection Certificate Supplement (it being understood and agreed that Borrower may combine this certificate with any of the other certificates required pursuant to this Section 5.01 (it being understood and agreed that doing so shall not in any way affect any of the timing requirements hereunder));

(f) Public Reports. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by any Company with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed to holders of its Indebtedness pursuant to the terms of the documentation governing such Indebtedness (or any trustee, agent or other representative therefor), as the case may be;

(g) Management Letters. Promptly after the receipt thereof by any Company, a copy of any "management letter" received by any such person from its certified public accountants and the management's responses thereto;

(h) Budgets. Within 45 days after the beginning of each fiscal year, a budget for Borrower in form reasonably satisfactory to the Administrative Agent, but to include balance sheets, statements of income and sources and uses of cash, for (i) each month of such fiscal year prepared in detail and (ii) each fiscal year thereafter, through and including the fiscal year in which the Final Maturity Date occurs, prepared in summary form, in each case, accompanied by the statement of a Financial Officer of Borrower to the effect that the budget of Borrower is a reasonable estimate for the periods covered thereby and, promptly when available, any significant revisions of such budget;

(i) Organization. Concurrently with any delivery of financial statements under Section 5.01(a), an accurate organizational chart as required by Section 3.07(c), or confirmation that there are no changes to Schedule 9(a) or Schedule 9(c) to the Perfection Certificate;

(j) Organizational Documents. Promptly provide copies of any Organizational Documents that have been amended or modified in accordance with the terms hereof; and

(k) Other Information. Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Company, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

**SECTION 5.02 Litigation and Other Notices.**

Furnish to the Administrative Agent and each Lender written notice of the following promptly (and, in any event, within five Business Days after any Responsible Officer of Borrower becomes aware thereof):

(a) any Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, (i) against any Company or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document;

(c) any material development adverse in any material respect to any Loan Party in either the Qui Tam Action or the Labarge SEC Action;

(d) any event or development that, individually or when aggregated with other events or developments, has resulted in, or could reasonably be expected to result in a Material Adverse Effect;

(e) the occurrence of a Casualty Event in excess of \$1,000,000;

(f) (i) the incurrence of any material Lien (other than Permitted Collateral Liens) on, or claim asserted against any of the Collateral or (ii) the occurrence of any other event which could materially affect the value of the Collateral.

**SECTION 5.03 Existence; Businesses and Properties.**

(a) Do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence, except as otherwise expressly permitted under Section 6.05 or Section 6.06 or, in the case of any Subsidiary, where the failure to perform such obligations, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, privileges, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; maintain and operate such business in substantially the manner in which it is presently conducted and operated, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; comply with all applicable Requirements of Law (including (i) any and all zoning, building, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property; (ii) any applicable export control regulations and (iii) laws and regulations relating to foreign corrupt practices as described in Section 3.23, but not including any Environmental Law subject to Section 5.09) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except where the failure to comply, individually or in the aggregate, could not

reasonably be expected to result in a Material Adverse Effect; and at all times maintain, preserve and protect all property material to the conduct of such business and keep such property in good repair, working order and condition (other than wear and tear occurring in the ordinary course of business) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; *provided* that nothing in this Section 5.03(b) shall prevent (i) sales of property, consolidations or mergers by or involving any Company in accordance with Section 6.05 or Section 6.06; (ii) the withdrawal by any Company of its qualification as a foreign corporation in any jurisdiction where such withdrawal, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment by any Company of any rights, franchises, licenses, trademarks, trade names, copyrights or patents that such person reasonably determines are not useful to its business or no longer commercially desirable.

#### **SECTION 5.04 Insurance.**

(a) Generally. Keep its insurable property adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks as is customary with companies in the same or similar businesses operating in the same or similar locations, including insurance with respect to Mortgaged Properties and other properties material to the business of the Companies against such casualties and contingencies and of such types, in such amounts and with such deductibles as is customary in the case of similar businesses operating in the same or similar locations, including (i) physical hazard insurance on an “all risk” basis, (ii) commercial general liability against claims for bodily injury, death or property damage covering any and all insurable claims, (iii) explosion insurance in respect of any boilers, machinery or similar apparatus constituting Collateral, (iv) business interruption insurance and (v) worker’s compensation insurance and such other insurance as may be required by any Requirements of Law.

(b) Requirements of Insurance. All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Collateral Agent of written notice thereof (unless otherwise agreed by the Collateral Agent in its reasonable discretion), (ii) name the Collateral Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable and (iii) if reasonably requested by the Collateral Agent, include a breach of warranty clause.

(c) Flood Insurance. With respect to each Mortgaged Property, obtain flood insurance in such total amount as the Administrative Agent or the Required Lenders may from time to time require, if at any time the area in which any improvements located on any Mortgaged Property is designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as amended from time to time.

(d) Broker's Report. Deliver to the Administrative Agent and the Collateral Agent and the Lenders a report of a reputable insurance broker with respect to such insurance and such supplemental reports with respect thereto as the Administrative Agent or the Collateral Agent may from time to time reasonably request.

(e) Mortgaged Properties. No Loan Party that is an owner of Mortgaged Property shall take any action that is reasonably likely to be the basis for termination, revocation or denial of any insurance coverage required to be maintained under such Loan Party's respective Mortgage or that could be the basis for a defense to any claim under any Insurance Policy maintained in respect of the Premises, and each Loan Party shall otherwise comply in all material respects with all Insurance Requirements in respect of the Premises; *provided, however*, that each Loan Party may, at its own expense and after written notice to the Administrative Agent, (i) contest the applicability or enforceability of any such Insurance Requirements by appropriate legal proceedings, the prosecution of which does not constitute a basis for cancellation or revocation of any insurance coverage required under this Section 5.04 or (ii) cause the Insurance Policy containing any such Insurance Requirement to be replaced by a new policy complying with the provisions of this Section 5.04.

(f) In the event that the proceeds of any insurance claim are paid to any Loan Party after an Event of Default has occurred and the Administrative Agent has terminated the Commitments and/or declared the Loans and Reimbursement Obligations due and payable, any such proceeds shall be held in trust for the benefit of the Collateral Agent and immediately after receipt thereof shall be paid to the Collateral Agent for application in accordance with Section 8.02 of this Agreement.

#### **SECTION 5.05 Obligations and Taxes.**

(a) Payment of Obligations. Pay its Indebtedness and other obligations promptly and in accordance with their terms unless the failure to pay could not reasonably be expected to result in a Material Adverse Effect and pay and discharge promptly when due all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, services, materials and supplies or otherwise that, if unpaid, might give rise to a Lien other than a Permitted Lien upon such properties or any part thereof; *provided* that such payment and discharge shall not be required with respect to any such Tax, assessment, charge, levy or claim to the extent (i) the validity or amount thereof shall be contested in good faith by appropriate proceedings timely instituted and diligently conducted and the applicable Company shall have set aside on its books adequate reserves or other appropriate provisions with respect thereto in accordance with GAAP, (ii) such contest operates to suspend collection of the contested obligation, Tax, assessment or charge and enforcement of a Lien other than a Permitted Lien, (iii) the failure to pay could not reasonably be expected to result in a Material Adverse Effect and (iv) in the case of Collateral, the applicable Company shall have (a) caused any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the Collateral on account of such Lien, and (b) at the option and at the request of the Administrative Agent, to the extent such Lien is in an amount in excess of \$500,000, maintained cash reserves in an amount sufficient to pay and discharge such Lien and the Administrative Agent's reasonable estimate of all interest and penalties related thereto.



(b) **Filing of Returns.** Timely and to its knowledge at the time of filing correctly file all material Tax Returns required to be filed by it. Withhold, collect and remit all material Taxes that it is required to collect, withhold or remit.

**SECTION 5.06 Employee Benefits.**

(a) Comply in all respects with the applicable provisions of ERISA and the Code, except to the extent that such noncompliance could not reasonably be expected to result in a Material Adverse Effect and (b) furnish to the Administrative Agent (x) as soon as possible after, and in any event within 5 days after any Responsible Officer of any Company or any ERISA Affiliates of any Company knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of the Companies or any of their ERISA Affiliates in an aggregate amount exceeding \$1,000,000 or the imposition of a Lien, a statement of a Financial Officer of Borrower setting forth details as to such ERISA Event and the action, if any, that the Companies propose to take with respect thereto; (y) upon request by the Administrative Agent, copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Company or any ERISA Affiliate with the Internal Revenue Service with respect to each Plan; (ii) the most recent actuarial valuation report for each Plan; (iii) all notices received by any Company or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan (or employee benefit plan sponsored or contributed to by any Company) as the Administrative Agent shall reasonably request and (z) promptly following any request therefor, copies of (i) any documents described in Section 101(k) of ERISA that any Company or its ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(1) of ERISA that any Company or its ERISA Affiliate may request with respect to any Multiemployer Plan; provided that if any Company or its ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the applicable Company or ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

**SECTION 5.07 Maintaining Records; Access to Properties and Inspections; Annual Meetings.**

(a) Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law are made of all dealings and transactions in relation to its business and activities. Each Company will permit any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the property of such Company at reasonable times and as often as may be reasonably requested, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances, accounts and condition of any Company with the officers and employees thereof and advisors therefor (including independent accountants), in each case during normal business hours with reasonable advance notice; *provided, however*, that unless an Event of Default has occurred and is continuing, the Loan Parties shall only be required to pay the expenses of one such visitation and inspection each fiscal year.

(b) Within 150 days after the end of each fiscal year of the Companies, at the request of the Administrative Agent or Required Lenders, hold a meeting (at a mutually agreeable location, venue and time or, at the option of the Administrative Agent, by conference call, the costs of such venue or call to be paid by Borrower) with all Lenders who choose to attend such meeting, at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of the Companies and the budgets presented for the current fiscal year of the Companies.

**SECTION 5.08 Use of Proceeds.**

Use the proceeds of the Loans only for the purposes set forth in Section 3.12 and request the issuance of Letters of Credit only for the purposes set forth in the definition of Commercial Letter of Credit or Standby Letter of Credit, as the case may be.

**SECTION 5.09 Compliance with Environmental Laws; Environmental Reports.**

(a) Comply, and use commercially reasonable efforts to cause all lessees and other persons occupying Real Property owned, operated or leased by any Company to comply with all Environmental Laws and Environmental Permits applicable to its operations and Real Property except to the extent that any noncompliance would not be reasonably expected to result in a Material Adverse Effect or Property Material Adverse Effect, if applicable; obtain and renew all material Environmental Permits applicable to its operations and Real Property; and conduct all Responses required by, and in accordance with, Environmental Laws; *provided* that no Company shall be required to undertake any Response 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 in accordance with GAAP.

(b) If a Default caused by reason of a breach of Section 3.18 or Section 5.09(a) shall have occurred and be continuing for more than 20 days without the Companies commencing activities reasonably likely to cure such Default in accordance with Environmental Laws, at the written request of the Administrative Agent or the Required Lenders through the Administrative Agent, provide to the Lenders within 45 days after such request, at the expense of Borrower, an environmental assessment report regarding the matters which are the subject of such Default, including, where appropriate, soil and/or groundwater sampling, prepared by an environmental consulting firm and, in the form and substance, reasonably acceptable to the Administrative Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance or Response to address them.

**SECTION 5.10 Reserved.**

**SECTION 5.11 Additional Collateral; Additional Guarantors.**

(a) Subject to this Section 5.11, with respect to any property acquired after the Closing Date by any Loan Party that is intended to be subject to the Lien created by any of the Security Documents but is not so subject, promptly (and in any event within 30 days after the acquisition thereof or such later date as the Collateral Agent may agree in its sole discretion) (i) execute and deliver to the Administrative Agent and the Collateral Agent such amendments or supplements to the relevant Security Documents or such other documents as the Administrative

Agent or the Collateral Agent shall deem reasonably necessary or advisable to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such property subject to no Liens other than Permitted Collateral Liens, and (ii) take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Document in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent. Borrower shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall reasonably require to confirm the validity, perfection and priority of the Lien of the Security Documents on such after-acquired properties.

(b) With respect to any person that is or becomes a Wholly-Owned Subsidiary after the Closing Date (except for Immaterial Subsidiaries), promptly (and in any event within 30 days after such person becomes a Subsidiary or such later date as the Collateral Agent may agree in its sole discretion) (i) deliver to the Collateral Agent the certificates, if any, representing all of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Loan Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Loan Party, as required by the Security Agreement, and (ii) cause such new Subsidiary to the extent that it is a Domestic Subsidiary (A) to execute a Joinder Agreement or such comparable documentation to become a Subsidiary Guarantor and a joinder agreement to the applicable Security Agreement, substantially in the form annexed thereto, and (B) to take all actions reasonably necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the applicable Security Agreement to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent. Notwithstanding the foregoing, (1) the Equity Interests required to be delivered to the Collateral Agent pursuant to clause (i) of this Section 5.11(b) and the Equity Interests required to be pledged to the Collateral Agent under the Loan Documents shall be limited, in the case of any Foreign Subsidiary, to (A) Voting Stock of any Subsidiary which is a controlled foreign corporation (as defined in Section 957(a) of the Code) representing 65% of the total voting power of all outstanding Voting Stock of such Subsidiary and (B) 100% of the Equity Interests of any Foreign Subsidiary not constituting Voting Stock of any such controlled foreign corporation (as defined in Section 957(a) of the Code). No Equity Interests owned by any first-tier Foreign Subsidiary or any of its Subsidiaries will be required to be pledged to secure the Secured Obligations and no first-tier Foreign Subsidiary (nor the Subsidiaries of a first-tier Foreign Subsidiary) will be required to become a Subsidiary Guarantor or to pledge any of its assets to secure the Secured Obligations.

(c) Promptly grant to the Collateral Agent, within 30 days of the acquisition thereof or such later date as the Collateral Agent may agree in its sole discretion, a security interest in and Mortgage on (i) each Real Property owned in fee by such Loan Party as is acquired by such Loan Party after the Closing Date and that, together with any improvements thereon, individually has a fair market value of at least \$5.0 million and (ii) unless the Collateral Agent otherwise consents, each leased Real Property of such Loan Party which lease individually provides for annual rental payments of at least \$2.0 million, in each case, as additional security for the

Secured Obligations (unless the subject property is already mortgaged to a third party to the extent permitted by Section 6.02 and, in the case of clause (ii), it is understood and agreed that Borrower may not be able to provide a security interest and Mortgage on such leased Real Property after its commercially reasonable efforts to do so). Such Mortgages shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and the Collateral Agent and shall constitute valid and enforceable perfected Liens subject only to Permitted Collateral Liens or other Liens acceptable to the Collateral Agent. The Mortgages or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Mortgages and all taxes, fees and other charges payable in connection therewith shall be paid in full. Such Loan Party shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall require to confirm the validity, perfection and priority of the Lien of any existing Mortgage or new Mortgage against such after-acquired Real Property (including a Title Policy, a Survey, flood determinations and evidence of flood insurance where applicable, and local counsel opinion (in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent) in respect of such Mortgage).

**SECTION 5.12 Security Interests; Further Assurances.**

Promptly, upon the reasonable request of the Administrative Agent or the Collateral Agent, at Borrower's expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary for the continued validity, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except as permitted by the applicable Security Document, or obtain any consents or waivers as may be necessary or appropriate in connection therewith. Deliver or cause to be delivered to the Administrative Agent and the Collateral Agent from time to time such other documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent as the Administrative Agent and the Collateral Agent shall reasonably deem necessary to perfect or maintain the Liens on the Collateral pursuant to the Security Documents. Upon the exercise by the Administrative Agent, the Collateral Agent or any Lender of any power, right, privilege or remedy pursuant to any Loan Document which requires any consent, approval, registration, qualification or authorization of any Governmental Authority execute and deliver all applications, certifications, instruments and other documents and papers that the Administrative Agent, the Collateral Agent or such Lender may reasonably require. If the Administrative Agent, the Collateral Agent or the Required Lenders determine that they are required by Requirements of Law to have appraisals prepared in respect of the Real Property of any Loan Party constituting Collateral, Borrower shall provide to the Administrative Agent appraisals that satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of FIRREA and are otherwise in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent.

**SECTION 5.13 Information Regarding Collateral.**

Not effect any change (i) in any Loan Party's legal name, (ii) in the location of any Loan Party's chief executive office, (iii) in any Loan Party's identity or organizational structure, (iv) in any Loan Party's Federal Taxpayer Identification Number or organizational identification number, if any, or (v) in any Loan Party's jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given the Collateral Agent and the Administrative Agent not less than 10 days' prior written notice (in the form of an Officers' Certificate), or such lesser notice period agreed to by the Collateral Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Collateral Agent or the Administrative Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority of the security interest of the Collateral Agent for the benefit of the Secured Parties in the Collateral, if applicable. Each Loan Party agrees to promptly provide the Collateral Agent with certified Organizational Documents reflecting any of the changes described in the preceding sentence.

**SECTION 5.14 Post-Closing Collateral Matters.**

Execute and deliver the documents and complete the tasks set forth on Schedule 5.14, in each case within the time limits specified on such schedule (with any such time frame permitted to be extended by the Administrative Agent in its sole discretion).

**SECTION 5.15 Maintenance of Ratings.**

Use commercially reasonable efforts to cause the Loans and Borrower's corporate credit/family ratings to continue to be publicly rated by Standard & Poor's Ratings Group and Moody's Investors Service Inc. (but not to maintain a specific rating).

**ARTICLE VI**

**NEGATIVE COVENANTS**

Each Loan Party warrants, covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full, unless the Required Lenders shall otherwise consent in writing, no Loan Party will, nor will they cause or permit any Subsidiaries to:

**SECTION 6.01 Indebtedness.**

Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except

(a) Indebtedness incurred under this Agreement and the other Loan Documents;

(b) (i) Indebtedness outstanding on the Closing Date and listed on Schedule 6.01(b), (ii) the Senior Notes and Senior Note Guarantees (including any notes and guarantees issued in exchange therefor in accordance with the registration rights document entered into in connection with the issuance of the Senior Notes and Senior Note Guarantees) and (iii) Permitted Refinancing Indebtedness in respect thereof (including any Indebtedness to the extent the proceeds of such Indebtedness are deposited and used to defease or to discharge the Indebtedness being refinanced in full);

(c) Indebtedness under Hedging Obligations with respect to interest rates, foreign currency exchange rates or commodity prices, in each case not entered into for speculative purposes; *provided* that if such Hedging Obligations relate to interest rates, (i) such Hedging Obligations relate to payment obligations on Indebtedness otherwise permitted to be incurred by the Loan Documents and (ii) the notional principal amount of such Hedging Obligations at the time incurred does not exceed the principal amount of the Indebtedness to which such Hedging Obligations relate;

(d) Indebtedness of any Loan Party to any other Loan Party permitted by Section 6.04(f);

(e) Indebtedness in respect of Purchase Money Obligations and Capital Lease Obligations, and refinancings or renewals thereof, in an aggregate amount not to exceed \$15.0 million at any time outstanding;

(f) Indebtedness incurred by Foreign Subsidiaries in an aggregate principal amount for all Foreign Subsidiaries not to exceed \$10.0 million at any time outstanding;

(g) Indebtedness in respect of bid, performance or surety bonds, completion guarantees and appeal bonds, workers' compensation claims, self-insurance obligations and bankers acceptances issued for the account of any Company in the ordinary course of business, including guarantees or obligations of any Company with respect to letters of credit supporting such bid, performance or surety bonds, completion guarantees and appeal bonds, workers' compensation claims, self-insurance obligations and bankers acceptances (in each case other than for an obligation for money borrowed);

(h) Contingent Obligations of any Loan Party in respect of Indebtedness otherwise permitted under this Section 6.01 (other than, in the case of any Permitted Refinancing Indebtedness, as may be limited by the definition thereof);

(i) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(j) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(k) Indebtedness incurred by Borrower and its Subsidiaries consisting of the financing of insurance premiums in the ordinary course of business;

(l) unsecured Indebtedness of any person acquired pursuant to a Permitted Acquisition, which Indebtedness was not incurred in contemplation of such Permitted Acquisition, and any Permitted Refinancing Indebtedness thereof; *provided* that after giving effect to the Indebtedness permitted under this Section 6.01(l), on a Pro Forma Basis, the Total Leverage Ratio shall not be greater than 4.25:1.00;

(m) unsecured Indebtedness consisting of promissory notes issued by any Loan Party to current or former officers, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of Borrower solely to the extent cash could be distributed to any such person under Section 6.07(b);

(n) (i) Permitted Subordinated Indebtedness of Borrower or any Additional Senior Unsecured Indebtedness of Borrower and (ii) any Permitted Refinancing Indebtedness thereof; *provided* that after giving effect to the incurrence of any Indebtedness permitted under this Section 6.01(n), on a Pro Forma Basis the Total Leverage Ratio shall not be greater than 4.25:1.00; and

(o) unsecured Indebtedness of any Company in an aggregate amount for all Companies not to exceed \$12.5 million at any time outstanding.

#### **SECTION 6.02 Liens.**

Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, the "**Permitted Liens**"):

(a) inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable or delinquent and Liens for taxes, assessments or governmental charges or levies, which are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(b) Liens in respect of property of any Company imposed by Requirements of Law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as, without limitation, carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, and (i) which do not in the aggregate materially detract from the value of the property of the Companies, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Companies, taken as a whole and (ii) which, if they secure obligations that are then due and unpaid, are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(c) any Lien in existence on the Closing Date and set forth on Schedule 6.02(c) and any Lien granted as a replacement or substitute therefor; provided that any such replacement or substitute Lien (i) except as permitted by the definition of Permitted Refinancing Indebtedness in respect of the Indebtedness secured by such Lien, does not secure an aggregate amount of Indebtedness, if any, greater than that secured on the Closing Date and (ii) does not encumber any property other than the property subject thereto on the Closing Date (any such Lien, an “**Existing Lien**”);

(d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness, (ii) individually or in the aggregate materially impairing the value or marketability of such Real Property or (iii) individually or in the aggregate materially interfering with the ordinary conduct of the business of the Companies at such Real Property;

(e) Liens arising out of judgments, attachments or awards not resulting in an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(f) Liens (other than any Lien imposed by ERISA) (x) imposed by Requirements of Law or deposits made in connection therewith in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security legislation, (y) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise Taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (z) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided that* (i) with respect to clauses (x), (y) and (z) of this paragraph (f), such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP and (ii) to the extent such Liens are not imposed by Requirements of Law, such Liens shall in no event encumber any property other than cash and Cash Equivalents and letters of credit issued to support payment of such obligations;

(g) Leases of the properties of any Company granted by such Company to third parties, in each case entered into in the ordinary course of such Company’s business so long no such Leases, individually or in the aggregate, interfere in any material respect with the ordinary conduct of the business of any Company or materially impair the use (for its intended purposes) or the value of the property subject thereto;

(h) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Company in the ordinary course of business;

(i) Liens securing Indebtedness incurred pursuant to Section 6.01(e); provided that any such Liens attach only to the property being financed pursuant to such Indebtedness and do not encumber any other property of any Company (other than improvements thereon and any proceeds from the sale thereof);



(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Company, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided* that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Reserved;

(l) Liens granted pursuant to the Security Documents to secure the Secured Obligations;

(m) licenses of Intellectual Property granted by any Company in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Companies;

(n) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(o) Liens securing Indebtedness incurred pursuant to Section 6.01(f); *provided* that (i) such Liens do not extend to, or encumber, property which constitutes Collateral and (ii) such Liens extend only to the property (or Equity Interests) of the Foreign Subsidiary incurring such Indebtedness;

(p) Liens granted to the financial institution providing the relevant Accounts Receivable Program solely with respect to the accounts receivable actually sold for which cash has been received by a Loan Party pursuant to the terms of such Accounts Receivable Program;

(q) Liens attached to cash earnest money deposits made by a Company in connection with any letter of intent or purchase agreement entered into by a Loan Party; *provided* that not more than 10% of the purchase price in respect of such letter of intent or purchase agreement has been deposited as a cash earnest money deposit;

(r) Liens on Equity Interests or assets to be sold pursuant to an agreement entered into for the sale or disposition of all or substantially all the Equity Interests or assets of a Subsidiary or for any Asset Sale or disposition of assets not constituting an Asset Sale, in each case to the extent permitted by the terms hereof, pending the closing of such sale or disposition; *provided* that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(s) Liens on the Equity Interests of a joint venture owned by a Loan Party pursuant to a joint venture agreement or Liens on the Equity Interests of a joint venture securing Indebtedness incurred by such joint venture so long as the recourse of any lender in respect of such Indebtedness against any Loan Party is limited to such Equity Interests or proceeds from the sale thereof;

(t) 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;

(u) Liens encumbering proceeds of Indebtedness permitted to be incurred pursuant to Section 6.01(b)(iii) (but not, for the avoidance of doubt, securing such Indebtedness) that are deposited and used to defease or to discharge the Indebtedness being refinanced; and

(v) Liens incurred in the ordinary course of business of any Company with respect to obligations that do not in the aggregate for all Companies exceed \$10.0 million at any time outstanding, so long as such Liens, to the extent covering any Collateral, are junior to the Liens granted pursuant to the Security Documents;

*provided, however*, that no consensual Liens shall be permitted to exist, directly or indirectly, on any Securities Collateral, other than Liens granted pursuant to the Security Documents.

#### **SECTION 6.03 Sale and Leaseback Transactions.**

Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a “**Sale and Leaseback Transaction**”) unless (i) the sale of such property is permitted by Section 6.06 and (ii) any Attributable Indebtedness and any Liens arising in connection with its use of such property are permitted by Section 6.01 and Section 6.02, respectively.

#### **SECTION 6.04 Investment, Loan, Advances and Acquisition.**

Directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any other person, or purchase or acquire any Equity Interests, bonds, notes, debentures, guarantees or other obligations or securities of, or any other interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or purchase or acquire (in one transaction or a series of transactions) any assets (all of the foregoing, collectively, “**Investments**”), except that the following shall be permitted:

(a) the Companies may consummate the Transactions in accordance with the provisions of the Transaction Documents;

(b) Investments outstanding on the Closing Date and identified on Schedule 6.04(b);

(c) the Companies may (i) acquire and hold accounts receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, provided that such trade terms may include such concessionary trade terms in the ordinary course of business as the Borrower deems reasonable under the circumstances, (ii) invest in, acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments held for collection in the ordinary course of business or (iv) make lease, utility and other similar deposits in the ordinary course of business;

(d) Hedging Obligations incurred pursuant to Section 6.01(c);

(e) loans and advances to directors, employees and officers of Borrower and the Subsidiaries for *bona fide* business purposes, including the purchase of Equity Interests of Borrower, in an aggregate amount not to exceed \$1.0 million at any time outstanding; *provided* that no loans in violation of Section 402 of the Sarbanes-Oxley Act shall be permitted hereunder;

(f) Investments (i) by any Company in Borrower or any existing Subsidiary Guarantor and (ii) by a Subsidiary that is not a Subsidiary Guarantor in any other existing Subsidiary that is not a Subsidiary Guarantor; *provided* that any Investment by or in a Loan Party in the form of a loan or advance shall be evidenced by the Intercompany Note and, in the case of a loan or advance by a Loan Party, pledged by such Loan Party as Collateral pursuant to the Security Documents;

(g) Investments in securities of trade creditors or customers in the ordinary course of business received in connection with the settlement of debts, the satisfaction of judgments, settlements, compromises or resolutions of litigation, arbitration or other disputes, upon foreclosure or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(h) Permitted Acquisitions;

(i) mergers and consolidations in compliance with Section 6.05;

(j) Investments made by Borrower or any Subsidiary as a result of consideration received in connection with an Asset Sale made in compliance with Section 6.06 or a disposition of assets not constituting an Asset Sale;

(k) to the extent applicable and permitted by Section 6.09(b), Capital Expenditures;

(l) Investments in Foreign Subsidiaries which are in an aggregate amount not to exceed \$15.0 million;

(m) Investments to the extent that the consideration therefor consists of Qualified Capital Stock of Borrower or the proceeds of the issuance of Qualified Capital Stock of Borrower to the extent not resulting in a Change in Control;

(n) Investments consisting of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business of the Borrower and its Subsidiaries;

(o) Investments consisting of cash earnest money deposits in connection with an acquisition permitted by this Agreement; *provided* that not more than 10% of the purchase price in respect of such acquisition has been deposited as a cash earnest money deposit;

(p) advances to suppliers of amounts provided by customers for the purchase of materials and the preparation of goods and inventory in respect of customer contracts entered into in the ordinary course of business;

(q) Investments held by a person acquired or merged into a Loan Party so long as such Investments (i) were not acquired in contemplation of such acquisition or merger and (ii) do not require any additional capital contributions be made by any Loan Party;

(r) other Investments in an aggregate amount not to exceed \$10.0 million at any time outstanding; and

(s) Investments consisting of Equity Interests owned by a Loan Party in a Captive Insurance Entity and capital contributions in such Captive Insurance Entity consisting of insurance premiums in respect of insurance acquired in the ordinary course that is customary for companies of a similar size engaged in similar businesses in similar locations, in each case, as the Borrower; *provided, however*, that the aggregate amount of all such Investments made (i) during the period commencing on the date the Captive Insurance Entity is created and ending on the last day of the fiscal year in which such Captive Insurance Entity is created shall not exceed an amount to be agreed upon by the Administrative Agent and the Borrower and (ii) during each fiscal year thereafter shall not exceed an amount to be agreed upon by the Administrative Agent and the Borrower.

An Investment shall be deemed to be outstanding to the extent not returned in the same form as the original Investment to Borrower or any Subsidiary Guarantor.

#### **SECTION 6.05 Mergers and Consolidations.**

Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (or unconditionally agree to do any of the foregoing at any future time), except that the following shall be permitted:

(a) the Transactions as contemplated by the Transaction Documents;

(b) Asset Sales in compliance with Section 6.06;

(c) acquisitions in compliance with Section 6.04;

(d) any Subsidiary may merge or consolidate with or into Borrower or any Subsidiary Guarantor (as long as Borrower is the surviving person in the case of any merger or consolidation involving Borrower and a Subsidiary Guarantor is the surviving person and remains a Wholly Owned Subsidiary of Borrower in any other case); provided that the Lien on and security interest in such property granted or to be granted in favor of the Collateral Agent under the Security Documents shall be maintained or created in accordance with the provisions of Section 5.11 or Section 5.12, as applicable;

(e) any Foreign Subsidiary may merge or consolidate with or into any other Foreign Subsidiary; and

(f) any Subsidiary may dissolve, liquidate or wind up its affairs at any time; provided that (i) such dissolution, liquidation or winding up, as applicable, could not reasonably be expected to have a Material Adverse Effect and (ii) the Lien on and security interest in any property of such Subsidiary granted or to be granted in favor of the Collateral Agent under the Security Documents shall be maintained or created in accordance with the provisions of Section 5.11 or Section 5.12, as applicable;

To the extent the Required Lenders or all the Lenders, as applicable, waive the provisions of this Section 6.05 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.05, such Collateral (unless sold to a Company) shall be sold free and clear of the Liens created by the Security Documents, and, so long as Borrower shall have provided the Administrative Agent such certifications or documents as the Administrative Agent shall reasonably request in order to demonstrate compliance with this Section 6.05, the Agents shall take all actions they deem appropriate in order to effect the foregoing.

**SECTION 6.06 Asset Sales.**

Effect any Asset Sale, or agree to effect any Asset Sale, except that the following shall be permitted:

(a) Asset Sales at fair market value; *provided* that (i) at the time of such Asset Sale, no Default shall exist or would result from such Asset Sale, (ii) the aggregate fair market value of assets disposed in respect of all Asset Sales pursuant to this clause (b) shall not exceed \$50.0 million with respect to all Asset Sales in the aggregate and (iii) at least 75% of the purchase price for all property subject to such Asset Sale shall be paid to Borrower or such Subsidiary solely in cash and Cash Equivalents;

(b) leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents;

(c) the Transactions as contemplated by the Transaction Documents;

(d) mergers, liquidations and consolidations in compliance with Section 6.05(d), (e) and (f);

(e) Investments in compliance with Section 6.04;

(f) sales of property 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 sale are promptly applied to the purchase price of such replacement property; and

(g) Asset Sales resulting in no more than \$500,000 in Net Cash Proceeds for any individual transaction and no more than \$2.0 million in Net Cash Proceeds of all Asset Sales of Companies pursuant to this clause (g) in the aggregate in any fiscal year.

To the extent the Required Lenders or all the Lenders, as applicable, waive the provisions of this Section 6.06 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.06, such Collateral (unless sold to a Company) shall be sold free and

clear of the Liens created by the Security Documents, and, so long as Borrower shall have provided the Administrative Agent such certifications or documents as the Administrative Agent shall reasonably request in order to demonstrate compliance with this Section 6.06, the Agents shall take all actions reasonably necessary in order to effect the foregoing.

For purposes of Section 6.06(a)(iii), the following shall be deemed to be cash: (a) the assumption of any liabilities of Borrower or any Subsidiary with respect to, and the release of Borrower or such Subsidiary from all liability in respect of, any Indebtedness of Borrower or the Subsidiaries permitted hereunder (in the amount of such Indebtedness) and (b) securities received by Borrower or any Subsidiary from the transferee that are promptly converted by Borrower or such Subsidiary into cash, to the extent of the cash received in that conversion.

**SECTION 6.07 Dividends.**

Authorize, declare or pay, directly or indirectly, any Dividends with respect to any Company, except that the following shall be permitted:

(a) Dividends by any Company to Borrower or to any Guarantor that is a Wholly Owned Subsidiary of Borrower;

(b) payments to Borrower, to repurchase or redeem Qualified Capital Stock of Borrower held by officers, directors or employees or former officers, directors or employees (or their transferees, estates or beneficiaries under their estates) of any Company, upon their death, disability, retirement, severance or termination of employment or service; *provided* that the aggregate cash consideration paid for all such redemptions and payments shall not exceed, in any fiscal year, the sum of (x) \$1.0 million (and up to 50% of such \$1.0 million not used in any fiscal year may be carried forward to the next succeeding (but no other) fiscal year), *plus* (y) the amount of any Net Cash Proceeds received by or contributed to Borrower after the Closing Date from the issuance and sale after the Closing Date of Qualified Capital Stock of Borrower to officers, directors or employees of any Company that have not been used to make any repurchases, redemptions or payments under this clause (b), *plus* (z) the net cash proceeds of any "key- man" life insurance policies of any Company received after the Closing Date that have not been used to make any repurchases, redemptions or payments under this clause (b);

(c) the Borrower and each Subsidiary may declare and make dividend payments or other distributions solely in Qualified Capital Stock of such Person;

(d) pro rata dividends or other distributions made by a Subsidiary that is not a Wholly Owned Subsidiary to minority stockholders (or owners of an equivalent interest in the case of a Subsidiary that is an entity other than a corporation);

(e) cashless repurchases of Equity Interests deemed to occur upon exercise of stock options if such Equity Interest represents a portion of the exercise price of such options;

(f) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Company; and

(g) for so long as no Default or Event of Default has occurred and is continuing at the time of any such Dividend or would result therefrom, Dividends not in excess of \$7.5 million per fiscal year.

**SECTION 6.08 Transactions with Affiliates.**

Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of any Company (other than between or among Borrower and one or more Subsidiary Guarantors), other than any transaction or series of related transactions in the ordinary course of business on terms and conditions at least as favorable to such Company as would reasonably be obtained by such Company at that time in a comparable arm's-length transaction with a person other than an Affiliate, except that the following shall be permitted:

(a) Dividends permitted by Section 6.07;

(b) Investments permitted by Sections 6.04(e), (f)(ii), and (l);

(c) reasonable and customary director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and reasonable indemnification and severance arrangements, in each case approved by the Board of Directors of Borrower;

(d) transactions pursuant to agreements or plans in existence on the Closing Date and set forth on Schedule 6.08 any modification thereto or any transaction contemplated thereby in any replacement agreement or plan therefor so long as such modification or replacement (taken as a whole) is not more disadvantageous to any Loan Party than the respective agreement or plan existing on the Closing Date;

(e) sales of Qualified Capital Stock of Borrower to Affiliates of Borrower not otherwise prohibited by the Loan Documents and the granting of registration and other customary rights in connection therewith;

(f) any transaction with an Affiliate where the only consideration paid by any Loan Party is Qualified Capital Stock of Borrower; and

(g) the Transactions as contemplated by the Transaction Documents.

**SECTION 6.09 Financial Covenants.**

(a) Maximum Total Leverage Ratio. If, at any time during the relevant fiscal quarter, (i) the sum of (a) any Revolving Borrowings plus (b) the amount drawn under any Letter of Credit exceeds \$1.0 million; or (ii) the aggregate amount of outstanding Letters of Credit exceeds \$5.0 million, permit the Total Leverage Ratio, as of the last day of any Test Period set forth in the table below, to exceed the ratio set forth opposite such period in the table below:

<u>Test Period Ending</u>	<u>Leverage Ratio</u>
October 1, 2011	5.25 to 1.0
December 31, 2011	5.25 to 1.0
March 31, 2012	5.25 to 1.0
June 30, 2012	5.25 to 1.0
September 29, 2012	5.00 to 1.0
December 31, 2012	4.75 to 1.0
March 30, 2013	4.75 to 1.0
June 29, 2013	4.75 to 1.0
September 28, 2013	4.25 to 1.0
December 31, 2013	4.00 to 1.0
March 29, 2014	4.00 to 1.0
June 28, 2014	4.00 to 1.0
September 27, 2014	3.75 to 1.0
December 31, 2014	3.75 to 1.0
April 4, 2015	3.75 to 1.0
July 4, 2015	3.75 to 1.0
October 4, 2015 and the end of each fiscal quarter thereafter	3.25 to 1.0

(b) Limitation on Capital Expenditures. Permit the aggregate amount of Capital Expenditures made during any fiscal year set forth below, to exceed the amount set forth opposite such fiscal year below:

<u>Period</u>	<u>Amount (in millions)</u>
Fiscal year ending December 31, 2011	\$ 24.0
Fiscal year ending December 31, 2012	\$ 27.0
Fiscal year ending December 31, 2013	\$ 28.0
Each fiscal year thereafter	\$ 30.0

; provided, however, that (x) if the aggregate amount of Capital Expenditures made in any fiscal year shall be less than the maximum amount of Capital Expenditures permitted under this Section 6.09(b) for such fiscal year (before giving effect to any carryover), then the amount of such shortfall may be added to the amount of Capital Expenditures permitted under this Section 6.09(b) for the immediately succeeding (but not any other) fiscal year and (y) in determining whether any amount is available for carryover, the amount expended in any fiscal year shall first be deemed to be from the amount allocated to such fiscal year (before giving effect to any carryover).



(c) Minimum Consolidated EBITDA. Permit Consolidated EBITDA as at the end of any fiscal quarter for any Test Period ending on or after October 1, 2011 to be less than \$50 million.

**SECTION 6.10 Prepayments of Other Indebtedness; Modifications of Organizational Documents and Other Documents, etc.**

Directly or indirectly:

(a) make any payment or prepayment of principal of, interest (including default interest) on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Indebtedness outstanding under the Senior Note Documents, any Subordinated Indebtedness (including Permitted Subordinated Indebtedness), any Additional Senior Unsecured Indebtedness or any Permitted Refinancing Indebtedness of any of the foregoing, except (i) in connection with (A) a refinancing, refunding, renewal, exchange or extension of the Permitted Subordinated Indebtedness, Senior Notes or Additional Senior Unsecured Indebtedness permitted by Section 6.01(b) or (ii), as the case may be or (B) regularly scheduled interest payments in accordance with the terms of such Senior Note Documents, Additional Senior Unsecured Indebtedness and, subject to the subordination provisions applicable thereto, Subordinated Indebtedness (including Permitted Subordinated Indebtedness), (ii) a refinancing of Indebtedness listed on Schedule 6.01(b) and permitted by Section 6.01(b) or (iii) any payment to the extent made with Qualified Capital Stock of Borrower;

(b) amend or modify, or permit the amendment or modification of, any provision of any Transaction Document, any document governing any Additional Senior Unsecured Indebtedness or any Subordinated Indebtedness (including any Permitted Subordinated Indebtedness) or any document governing any Accounts Receivable Program, in each case in any manner that is adverse in any material respect to the interests of the Lenders;

(c) terminate, amend or modify any of its Organizational Documents (including (x) by the filing or modification of any certificate of designation and (y) any election to treat any Pledged Securities (as defined in the Security Agreement) as a "security" under Section 8-103 of the UCC other than concurrently with the delivery of certificates representing such Pledged Securities to the Collateral Agent) or any agreement to which it is a party with respect to its Equity Interests (including any stockholders' agreement), or enter into any new agreement with respect to its Equity Interests, other than any such amendments or modifications or such new agreements which are not adverse in any material respect to the interests of the Lenders; *provided* that Borrower may issue such Equity Interests, so long as such issuance is not prohibited by Section 6.12 or any other provision of this Agreement, and may amend or modify its Organizational Documents to authorize any such Equity Interests; or

(d) cause or permit any other obligation (other than the Secured Obligations, the Guaranteed Obligations, the Senior Notes and any Additional Senior Unsecured Indebtedness) to constitute "Designated Senior Debt" or such other comparable term under the terms of any Subordinated Indebtedness (including Permitted Subordinated Indebtedness).

#### **SECTION 6.11 Limitation on Certain Restrictions on Subsidiaries.**

Directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by Borrower or any Subsidiary, or pay any Indebtedness owed to Borrower or a Subsidiary, (b) make loans or advances to Borrower or any Subsidiary or (c) transfer any of its properties to Borrower or any Subsidiary, except for such encumbrances or restrictions existing under or by reason of (i) applicable Requirements of Law; (ii) this Agreement and the other Loan Documents; (iii) (a) the Senior Note Documents, (b) Additional Senior Unsecured Indebtedness and Permitted Refinancing Indebtedness with respect thereto, so long as such encumbrances or restrictions are not, taken as a whole, more restrictive to Borrower and its Subsidiaries in any material respect than those in this Agreement, and (c) Subordinated Indebtedness and Permitted Refinancing Indebtedness with respect thereto, so long as such encumbrances or restrictions are not, taken as a whole, more restrictive to Borrower and its Subsidiaries in any material respect than those in the Senior Note Documents; (iv) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Subsidiary; (v) customary provisions restricting assignment of any agreement entered into by a Subsidiary in the ordinary course of business; (vi) any holder of a Lien permitted by Section 6.02 restricting the transfer of the property subject thereto; (vii) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 6.06 pending the consummation of such sale; (viii) any agreement in effect at the time such Subsidiary becomes a Subsidiary of Borrower, so long as such agreement was not entered into in connection with or in contemplation of such person becoming a Subsidiary of Borrower; (ix) without affecting the Loan Parties' obligations under Section 5.11, customary provisions in partnership agreements, limited liability company organizational governance documents, asset sale and stock sale agreements and other similar agreements entered into in the ordinary course of business that restrict the transfer of ownership interests in or other rights in respect of such partnership, limited liability company or similar person; (x) restrictions on cash or other deposits or net worth imposed by suppliers, landlords, customers, insurance and surety or bonding companies under contracts entered into in the ordinary course of business; (xi) any instrument governing Indebtedness assumed in connection with any Permitted Acquisition, which encumbrance or restriction is not applicable to any person, or the properties or assets of any person, other than the person or the properties or assets of the person so acquired; (xii) in the case of any joint venture which is not a Loan Party in respect of any matters referred to in clauses (b) and (c) above, such person's Organizational Documents or its joint venture agreement or stockholders agreements solely to the extent affecting the Equity Interests of or property held in the subject joint venture; and (xiii) any encumbrances or restrictions imposed by any amendments or Permitted Refinancing Indebtedness that is otherwise permitted by the Loan Documents of the contracts, instruments or obligations referred to in clauses (iii) or (viii) above; *provided* that such amendments are no more materially restrictive with respect to such encumbrances and restrictions than those prior to such amendment and, in connection with Permitted Refinancing Indebtedness, the restrictions contained in such definition are complied with.

**SECTION 6.12 Limitation on Issuance of Capital Stock.**

(a) With respect to Borrower, issue any Equity Interest that is not Qualified Capital Stock.

(b) With respect to any Subsidiary, issue any Equity Interest (including by way of sales of treasury stock but not including directors' qualifying shares or Equity Interests that are required to be held by another person in order to satisfy a foreign Requirement of Law requiring an equity owner resident in the local jurisdiction) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except (i) for stock splits, stock dividends and additional issuances of Equity Interests which do not decrease the percentage ownership of Borrower or any Subsidiaries in any class of the Equity Interest of such Subsidiary and (ii) Subsidiaries of Borrower formed after the Closing Date in accordance with Section 6.13 may issue Equity Interests to Borrower or the Subsidiary of Borrower which is to own such Equity Interests. All Equity Interests issued in accordance with this Section 6.12(b) shall, to the extent required by Sections 5.11 and 5.12 or any Security Agreement or if such Equity Interests are issued by Borrower, be delivered to the Collateral Agent for pledge pursuant to the applicable Security Agreement.

**SECTION 6.13 Limitation on Creation of Subsidiaries.**

Establish, create or acquire any additional Subsidiaries without the prior written consent of the Required Lenders; *provided that*, without such consent, Borrower may (i) establish or create one or more Wholly Owned Subsidiaries of Borrower or (ii) acquire one or more Subsidiaries in connection with a Permitted Acquisition, so long as, in each case, Section 5.11(b) shall be complied with to the extent required by such section.

**SECTION 6.14 Business.**

With respect to Borrower and the Subsidiaries, engage (directly or indirectly) in any business other than those businesses in which Borrower and its Subsidiaries are engaged on the Closing Date as described in the Confidential Information Memorandum (or, in the good faith judgment of the Board of Directors, which are substantially related thereto or are reasonable extensions thereof).

**SECTION 6.15 Reserved.**

**SECTION 6.16 Fiscal Year.**

Change its fiscal year-end to a date other than December 31.

**SECTION 6.17 No Further Negative Pledge.**

Enter into any agreement, instrument, deed or lease which prohibits or limits the ability of any Company to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation, except the following: (1) this Agreement and the other Loan Documents; (2) covenants in documents creating Liens

permitted by Section 6.02 prohibiting further Liens on the properties encumbered thereby; (3) the Senior Note Documents; (4) any Additional Senior Unsecured Indebtedness and Permitted Refinancing Indebtedness with respect thereto, so long as such covenants are not, taken as a whole, more restrictive to Borrower and its Subsidiaries in any material respect than those in this Agreement; (5) any Subordinated Indebtedness and Permitted Refinancing Indebtedness with respect thereto, so long as such covenants are no not, taken as a whole, more restrictive to Borrower and its Subsidiaries in any material respect than those in the Senior Note Documents; (6) any other agreement that does not restrict in any manner (directly or indirectly) Liens created pursuant to the Loan Documents on any Collateral securing the Secured Obligations and does not require the direct or indirect granting of any Lien securing any Indebtedness or other obligation by virtue of the granting of Liens on or pledge of property of any Company to secure the Secured Obligations; and (7) any prohibition or limitation that (a) exists pursuant to applicable Requirements of Law, (b) consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 6.06 pending the consummation of such sale, (c) restricts subletting or assignment of leasehold interests contained in any Lease governing a leasehold interest of Borrower or a Subsidiary, (d) exists in any agreement assumed in connection with any Permitted Acquisition, which encumbrance or restriction is not applicable to any person, or the properties or assets of any person, other than the person or the properties or assets of the person so acquired, (e) customary provisions restricting assignment or any other transfer of any agreement entered into by the Borrower or a Subsidiary in the ordinary course of business, (f) customary provisions with respect to distributions of assets or property in joint venture agreements, asset sale agreements, stock sale agreements and other similar agreements not otherwise prohibited hereunder; *provided* that such encumbrances or restrictions apply only to the assets or property subject to such joint venture, asset sale, stock sale or similar agreement or to the assets or property being sold or disposed of, as the case may be, (g) restrictions on cash or other deposits or net worth imposed by suppliers, landlords, customers, insurance and surety or bonding companies under contracts entered into in the ordinary course of business, (h) in the case of any joint venture which is not a Loan Party, exists in such person's Organizational Documents or its joint venture agreement or stockholders agreements solely to the extent affecting the Equity Interests of or property held in the subject joint venture, and (i) is imposed by any amendments or Permitted Refinancing Indebtedness that is otherwise permitted by the Loan Documents of the contracts, instruments or obligations referred to in clause (3) or (7)(d); *provided* that such amendments are no more materially restrictive with respect to such prohibitions and limitations than those prior to such amendment and, in connection with Permitted Refinancing Indebtedness, the restrictions contained in such definition are complied with.

**SECTION 6.18 Compliance with Anti-Terrorism and Anti-Money Laundering Laws.**

(a) Directly or indirectly, in connection with the Loans, (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any Anti-Terrorism Law.

(b) Knowingly directly or indirectly, in connection with the Loans, cause or permit any of the funds of such Loan Party that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans or the repayment of the Loans would be in violation of any Anti-Terrorism Law, any Anti-Money Laundering Law or any other Requirements of Law.

(c) Cause or permit (i) an Embargoed Person to have any direct or indirect interest in or benefit of any nature whatsoever in the Loan Parties or (ii) any of the funds or properties of the Loan Parties that are used to repay the Loans to constitute property of, or be beneficially owned directly or indirectly by, an Embargoed Person.

(d) The Loan Parties shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Loan Parties' compliance with this Section 6.18.

## ARTICLE VII

### GUARANTEE

#### **SECTION 7.01 The Guarantee.**

The Guarantors hereby jointly and severally guarantee, as a primary obligor and not as a surety to each Secured Party and their respective successors and assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of and interest on (including any interest, fees, costs or charges that would accrue but for the provisions of the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code) the Loans made by the Lenders to, and the Notes held by each Lender of, Borrower, and all other Secured Obligations from time to time owing to the Secured Parties by any Loan Party under any Loan Document or any Hedging Agreement or Treasury Services Agreement entered into with a counterparty that is a Secured Party, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Guarantors hereby jointly and severally agree that if Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

#### **SECTION 7.02 Obligations Unconditional.**

The obligations of the Guarantors under Section 7.01 shall constitute a guaranty of payment and to the fullest extent permitted by applicable Requirements of Law, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations of Borrower under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any

substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, Issuing Bank or any Lender or Agent as security for any of the Guaranteed Obligations shall fail to be perfected; or

(v) the release of any other Guarantor pursuant to Section 7.09.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against Borrower under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect

thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

**SECTION 7.03 Reinstatement.**

The obligations of the Guarantors under this Article VII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

**SECTION 7.04 Subrogation; Subordination.**

Each Guarantor hereby agrees that until the indefeasible payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall not assert any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 7.01, whether by subrogation, as a result of the contribution rights under Section 7.10 or otherwise, against Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party permitted pursuant to Section 6.01(d) shall be subordinated to such Loan Party's Secured Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

**SECTION 7.05 Remedies.**

The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.01 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.01) for purposes of Section 7.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 7.01.

**SECTION 7.06 Instrument for the Payment of Money.**

Each Guarantor hereby acknowledges that the guarantee in this Article VII constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

### **SECTION 7.07 Continuing Guarantee.**

The guarantee in this Article VII is a continuing guarantee of payment and performance (and not merely of collection), and shall apply to all Guaranteed Obligations whenever arising.

### **SECTION 7.08 General Limitation on Guarantee Obligations.**

It being understood that the intent of the Secured Parties is to obtain a guaranty from each Guarantor, and the intent of each Guarantor is to incur guarantee obligations, in an amount no greater than the largest amount that would not render such obligations subject to avoidance under Section 548 of the Bankruptcy Code or any applicable state law relating to fraudulent conveyances or fraudulent transfers, it is hereby agreed that:

(a) If (i) the sum (without duplication) of the obligations of the Guarantors hereunder (the “**Guarantor Obligations**”) exceed (ii) the sum (the “**Total Available Net Assets**”) of the Maximum Available Net Assets (as defined in Section 7.10) of the Loan Parties with positive Maximum Available Net Assets, in the aggregate, then the Guarantor Obligations of each Guarantor shall be limited to the greater of (x) Total Available Net Assets and (y) the value received by such Guarantor in connection with the incurrence of the Guarantor Obligations to the greatest extent such value can be determined; and

(b) if, but for the operation of this Section 7.08(b) and notwithstanding Section 7.08(a), the Guarantor Obligations of any Guarantor hereunder otherwise would be subject to avoidance under Section 548 of the Bankruptcy Code or any applicable state law relating to fraudulent conveyances or fraudulent transfers, taking into consideration such Guarantor’s (i) rights of contribution, reimbursement and indemnity from the Borrower and the other Guarantors with respect to amounts paid by such Guarantor in respect of the Obligations (including pursuant to Section 7.10) (calculated so as to reasonably maximize the total amount of obligations able to be incurred hereunder), and (ii) rights of subrogation to the rights of the Secured Parties, then the Guarantor Obligations of such Guarantor shall be the largest amount, if any, that would not leave such Guarantor, after the incurrence of such obligations, insolvent or with unreasonable small capital within the meaning of Section 548 of the Bankruptcy Code or any applicable state law relating to fraudulent conveyances or fraudulent transfers, or otherwise make such obligations subject to such avoidance.

Any Person asserting that the Guarantor Obligations of such Guarantor are subject to Section 7.08(a) or are avoidable as referenced in Section 7.08(b) shall have the burden (including the burden of production and of persuasion) of proving (a) the extent to which such Guarantor Obligations, by operation of Section 7.08(a), are less than the Obligations of the Borrower owed to the Secured Parties or (b) that, without giving effect to Section 7.08(b), such Guarantor’s Guarantor Obligations hereunder would be avoidable and the extent to which such Guarantor Obligations, by operation of Section 7.08(b), are less than such Obligations of the Borrower, as the case may be.



### **SECTION 7.09 Release of Guarantors.**

If, in compliance with the terms and provisions of the Loan Documents, all or substantially all of the Equity Interests of any Guarantor are sold or otherwise transferred (a “**Transferred Guarantor**”) to a person or persons, none of which is Borrower or a Subsidiary, such Transferred Guarantor shall, upon the consummation of such sale or transfer, be automatically released from its obligations under this Agreement (including under Section 10.03 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Security Document and the pledge of such Equity Interests to the Collateral Agent pursuant to the Security Agreements shall be automatically released, and, so long as Borrower shall have provided the Administrative Agent such certifications or documents as the Administrative Agent shall reasonably request to demonstrate compliance with this Agreement, the Collateral Agent shall take such actions as are necessary to effect each release described in this Section 7.09 in accordance with the relevant provisions of the Security Documents.

### **SECTION 7.10 Right of Contribution.**

In order to provide for just and equitable contribution, indemnity and reimbursement among the Guarantors and any other Loan Parties, including the Borrower, in connection with the execution of this Agreement, the Loan Parties have agreed among themselves that if any Guarantor satisfies some or all of the Guaranteed Obligations (a “**Funding Guarantor**”), the Funding Guarantor shall be entitled to contribution, indemnity or reimbursement, as applicable, from the other Loan Parties that have positive Maximum Available Net Assets for all payments made by the Funding Guarantor in satisfying the Guaranteed Obligations, so that each Loan Party that remains obligated under this Article VII or any other guaranty or otherwise for the Obligations at the time that a Funding Guarantor makes such payment, without regard to the making of such payment (a “**Remaining Loan Party**”), and has a positive Maximum Available Net Assets shall bear a portion of such payment equal to the percentage that such Remaining Loan Party’s Maximum Available Net Assets bears to the aggregate Maximum Available Net Assets of all Loan Parties that have positive Maximum Available Net Assets, provided that no Remaining Loan Party’s obligation to make such contribution, indemnity or reimbursement payments hereunder shall exceed an amount equal to the Maximum Available Net Assets of such Remaining Loan Party. Each Guarantor’s right of contribution shall be subject to the terms and conditions of Section 7.04.

As used herein,

“**Available Net Assets**” shall mean, with respect to any Loan Party, the amount, as of the respective date of calculation, by which the sum of a person’s assets (including subrogation, indemnity, contribution, reimbursement and similar rights that the Loan Party may have, but excluding any such rights in respect of the Guarantor Obligations and the Senior Note Guarantees), determined on the basis of a “fair valuation” or their “fair saleable value” (whichever is the applicable test under Section 548 and other relevant provisions of the Bankruptcy Code and the relevant state fraudulent conveyance or transfer laws), is greater than the amount that will be required to pay all of such person’s debts, in each case matured or unmatured, contingent or otherwise, as of the date of calculation, but excluding liabilities arising under this Article VII and excluding, to the maximum extent permitted by Requirements of Law with the objective of avoiding rendering such person insolvent, liabilities subordinated to the Obligations arising out of loans or advances made to such Loan Party by any other person, and

“**Maximum Available Net Assets**” shall mean, with respect to any Loan Party, the greatest of the Available Net Assets of such Loan Party calculated as of the following dates: (A) the date on which such person becomes a Loan Party and becomes obligated under any Senior Note or Senior Note Guarantee, and (B) each date on which such Loan Party expressly reaffirms its Guarantee under Article VII.

Each Guarantor shall be deemed to expressly reaffirm its Guarantee upon each borrowing of a Loan and each Letter of Credit issuance. The meaning of the terms “fair valuation” and “fair saleable value” and the calculation of assets and liabilities shall be determined and made in accordance with the relevant provisions of the Bankruptcy Code and applicable state fraudulent conveyance or transfer laws.

The provisions of this Section 7.10 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent, the Issuing Bank, the Swingline Lender and the Lenders, and each Guarantor shall remain liable to the Administrative Agent, the Issuing Bank, the Swingline Lender and the Lenders for the full amount guaranteed by such Guarantor hereunder.

## ARTICLE VIII

### EVENTS OF DEFAULT

#### SECTION 8.01 Events of Default.

Upon the occurrence and during the continuance of the following events (“**Events of Default**”):

(a) default shall be made in the payment of any principal of any Loan or any Reimbursement Obligation when and as the same shall become due and payable, whether at the due date thereof (including a Term Loan Repayment Date) or at a date fixed for prepayment (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise;

(b) default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in paragraph (a) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three Business Days;

(c) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect (or, to the extent qualified as to materiality, in any respect) when so made, deemed made or furnished;

(d) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in Section 5.02 (other than 5.02(e)), 5.03(a), 5.08 or 5.14 or in Article VI; *provided* that any Event of Default under Section 6.09(a) shall not constitute an Event of Default with respect to the Term Loans until the earlier of (x) the date that

is 45 days after the date such Event of Default arises and is continuing with respect to the Revolving Loans and/or Revolving Commitments and (y) the date on which the Administrative Agent or the Revolving Lenders have accelerated the maturity of the Revolving Loans or have commenced the exercise of remedies with respect to the Revolving Loans and/or Revolving Commitments;

(e) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (a), (b) or (d) immediately above) and such default shall continue unremedied or shall not be waived for a period of 30 days after written notice thereof from the Administrative Agent or any Lender to Borrower;

(f) any Company shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations), when and as the same shall become due and payable beyond any applicable grace period, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee or other representative on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity or become subject to a mandatory offer purchase by the obligor; *provided* that, it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) exceeds \$10.0 million at any one time (*provided* that, in the case of Hedging Obligations, the amount counted for this purpose shall be the amount payable by all Companies if such Hedging Obligations were terminated at such time);

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of Borrower, any Material Subsidiary, or of a substantial part of the property of Borrower or any Material Subsidiary, under Title 11 of the U.S. Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower, any Material Subsidiary, or of a substantial part of the property of Borrower or any Material Subsidiary; or (iii) the winding-up or liquidation of Borrower or any Material Subsidiary; and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (g) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or any Material Subsidiary or for a substantial part of the property of Borrower or any Material Subsidiary; (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate;

(i) one or more judgments, orders or decrees for the payment of money in an aggregate amount in excess of \$10.0 million (to the extent not paid or covered by insurance provided by a reputable and solvent insurance company that has not denied liability therefor) shall be rendered against any Company or any combination thereof and the same shall remain undischarged, unvacated or unbonded for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon properties of any Company to enforce any such judgment;

(j) one or more ERISA Events shall have occurred that, in the opinion of the Required Lenders, when taken together with all other such ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(k) any security interest and Lien on Collateral with a value in excess of \$1.0 million purported to be created by any Security Document shall cease to be in full force and effect, or shall cease to give the Collateral Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Security Document (including a perfected first priority security interest in and Lien on all of the Collateral thereunder (except as otherwise expressly provided in such Security Document)) in favor of the Collateral Agent, or shall be asserted by Borrower or any other Loan Party not to be a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on the Collateral covered thereby;

(l) any Loan Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Loan Party or any other person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Loan Party shall repudiate or deny any portion of its liability or obligation for the Obligations; or

(m) there shall have occurred a Change in Control;

then, and in every such event (other than an event with respect to Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders (or at the request of the Required Revolving Lenders as set forth in the final sentence of this paragraph) shall, by notice to Borrower, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans and Reimbursement Obligations then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans and Reimbursement Obligations so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other Obligations of Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding; and in any event, with respect to

Borrower described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans and Reimbursement Obligations then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other Obligations of Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding. Notwithstanding the foregoing, solely in connection with an Event of Default under Section 6.09(a), the Required Revolving Lenders may request the Administrative Agent to take, and the Administrative Agent shall, by notice to the Borrower, take the actions referenced in clauses (i) and (ii) in the immediately preceding sentence in respect of the Revolving Commitments and/or the Revolving Loans (it being understood and agreed that for the avoidance of doubt this sentence shall in no way limit the ability of the Required Lenders to request the Administrative Agent to take the actions referenced in clauses (i) and (ii) in the immediately preceding sentence for an Event of Default under Section 6.09(a) subject to the proviso set forth in Section 8.01(d)).

**SECTION 8.02 Application of Proceeds.**

The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies shall be applied, in full or in part, together with any other sums then held by the Collateral Agent pursuant to this Agreement, promptly by the Collateral Agent as follows:

(a) *First*, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Collateral Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith and all amounts for which the Collateral Agent is entitled to indemnification pursuant to the provisions of any Loan Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) *Second*, to the payment of all other reasonable costs and expenses of such sale, collection or other realization including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) *Third*, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the indefeasible payment in full in cash, *pro rata*, of interest and other amounts constituting Obligations (other than principal, Reimbursement Obligations and obligations to cash collateralize Letters of Credit) and any fees, premiums and scheduled periodic payments due under Hedging Agreements or Treasury Services Agreements constituting Secured Obligations and any interest accrued thereon, in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(d) *Fourth*, to the indefeasible payment in full in cash, *pro rata*, of principal amount of the Obligations and any premium thereon (including Reimbursement Obligations and obligations to cash collateralize Letters of Credit) and any breakage, termination or other payments under Hedging Agreements and Treasury Services Agreements constituting Secured Obligations and any interest accrued thereon; and

(e) *Fifth*, the balance, if any, to the person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (e) of this Section 8.02, the Loan Parties shall remain liable, jointly and severally, for any deficiency.

## ARTICLE IX

### THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

#### **SECTION 9.01 Appointment and Authority.**

Each of the Lenders and the Issuing Bank hereby irrevocably appoints UBS AG, Stamford Branch, to act on its behalf as the Administrative Agent and the Collateral Agent hereunder and under the other Loan Documents and authorizes such Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agents by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto, including, without limitation, the release of the Guarantee of a Subsidiary Guarantor and the release of the Lien securing the Secured Obligations on any asset of a Loan Party, in each case pursuant to the terms hereof. The provisions of this Article are solely for the benefit of the Administrative Agent, the Collateral Agent, the Lenders and the Issuing Bank, and neither Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

#### **SECTION 9.02 Rights as a Lender.**

Each person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each person serving as an Agent hereunder in its individual capacity. Such person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such person were not an Agent hereunder and without any duty to account therefor to the Lenders.

#### **SECTION 9.03 Exculpatory Provisions.**

No Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, no Agent:

- (i) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that such Agent shall not be required to take any action that, in its judgment or the judgment of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable Requirements of Law; and

(iii) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the person serving as such Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (x) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.02) or (y) in the absence of its own gross negligence or willful misconduct. No Agent shall be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent by Borrower, a Lender or the Issuing Bank.

No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

Each party to this Agreement acknowledges and agrees that the Administrative Agent may use an outside service provider for the tracking of all UCC financing statements required to be filed pursuant to the Loan Documents and notification to the Administrative Agent, of, among other things, the upcoming lapse or expiration thereof, and that any such service provider will be deemed to be acting at the request and on behalf of Borrower and the other Loan Parties. No Agent shall be liable for any action taken or not taken by any such service provider.

#### **SECTION 9.04 Reliance by Agent.**

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall be entitled to rely upon the advice of any such counsel, accountants or experts and shall not be liable for any action taken or not taken by it in accordance with such advice.

#### **SECTION 9.05 Delegation of Duties.**

Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through, or delegate any and all such rights and powers to, any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

#### **SECTION 9.06 Resignation of Agent.**

(a) Each Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with Borrower, to appoint a successor, which shall be a financial institution with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders and the Issuing Bank, appoint a successor Agent meeting the qualifications set forth above provided that if the Agent shall notify Borrower and the Lenders that no qualifying person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders or the Issuing Bank under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security as nominee until such time as a successor Collateral Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through an Agent shall



instead be made by or to each Lender and the Issuing Bank directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and Section 10.03 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

(b) Any resignation by UBS AG, Stamford Branch as Administrative Agent pursuant to Section 9.06(a) shall, unless UBS AG, Stamford Branch gives notice to Borrower otherwise, also constitute its resignation as Issuing Bank and Swingline Lender, and such resignation as Issuing Bank and Swingline Lender shall become effective simultaneously with the discharge of the Administrative Agent from its duties and obligations as set forth in the immediately preceding paragraph (except as to already outstanding Letters of Credit and LC Obligations and Swingline Loans, as to which the Issuing Bank and the Swingline Lender shall continue in such capacities until the LC Exposure relating thereto shall be reduced to zero and such Swingline Loans shall have been repaid, as applicable, or until the successor Administrative Agent shall succeed to the roles of Issuing Bank and Swingline Lender in accordance with the next sentence and perform the actions required by the next sentence). Upon the acceptance of a successor's appointment as Administrative Agent hereunder, unless UBS AG, Stamford Branch and such successor gives notice to Borrower otherwise, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and Swingline Lender and (ii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit. At the time any such resignation of the Issuing Bank shall become effective, Borrower shall pay all unpaid fees accrued for the account of the retiring Issuing Bank pursuant to Section 2.05(c).

**SECTION 9.07 Non-Reliance on Agent and Other Lenders.**

Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender further represents and warrants that it has had the opportunity to review the Confidential Information Memorandum and each other document made available to it on the Platform in connection with this Agreement and has acknowledged and accepted the terms and conditions applicable to the recipients thereof. Each Lender and the Issuing Bank 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 from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

#### **SECTION 9.08 Withholding Tax.**

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. Without limiting the provisions of Section 2.15(a) or (c), each Lender and the Issuing Bank shall, and does hereby, indemnify the Administrative Agent, and shall make payable in respect thereof within 30 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) paid or incurred by or asserted against the Administrative Agent by the Internal Revenue Service or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender or the Issuing Bank by the Administrative Agent shall be conclusive absent manifest error. Each Lender and the Issuing Bank hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or Issuing Bank under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.08. The agreements in this Section 9.08 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

#### **SECTION 9.09 No Other Duties, etc.**

Anything herein to the contrary notwithstanding, none of the Joint Bookrunners, the Joint Lead Arrangers, the Syndication Agent or the Documentation Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, the Collateral Agent, a Lender or the Issuing Bank hereunder or as explicitly set forth herein.

#### **SECTION 9.10 Enforcement.**

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent, or as the Required Lenders may require or otherwise direct, for the benefit of all the Lenders and the Issuing Bank; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Issuing Bank or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing

Bank or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with, and subject to, the terms of this Agreement, or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any bankruptcy or insolvency law.

**SECTION 9.11 Administrative Agent May File Proofs of Claim.**

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Reimbursement Obligation 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

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Reimbursement Obligations 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, the Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Bank and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Bank and the Administrative Agent under Article II or Section 10.08) allowed in such judicial proceeding; and

(ii) 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 and the Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Bank, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Article II and Section 10.08.

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 or the Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the Issuing Bank to authorize the Administrative Agent to vote in respect of the claim of any Lender or the Issuing Bank or in any such proceeding.

**SECTION 9.12 Collateral and Guaranty Matters.**

The Lenders and the Issuing Bank (and each other Secured Party by their acceptance of the benefits of the Loan Documents shall deem to) irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document if approved, authorized or ratified in

writing in accordance with Section 10.02, or pursuant to Section 6.05 or Section 6.06. Upon request by the Collateral Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property in accordance with this Section.

## ARTICLE X

### MISCELLANEOUS

#### SECTION 10.01 Notices.

(a) **Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (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:

(i) if to any Loan Party, to Borrower at:

Ducommun Incorporated  
23301 Wilmington Avenue  
Carson, California 90745-6209  
Attention: General Counsel  
Telecopier No.: (310) 513-7279

(ii) if to the Administrative Agent, the Collateral Agent or Issuing Bank, to it at:

UBS AG, Stamford Branch  
677 Washington Boulevard, 6th Floor  
Stamford, Connecticut 06901  
Attention: Banking Products Services Agency  
Telecopier No.: (203) 719-3180  
Email: DL-UBSAgency@ubs.com

(iii) if to a Lender, to it at its address (or telecopier number) set forth in its Administrative Questionnaire; and

(iv) if to the Swingline Lender, to it at:

UBS Loan Finance LLC  
677 Washington Boulevard, 6th Floor  
Stamford, Connecticut 06901  
Attention: Banking Products Services Agency  
Telecopier No.: (203) 719-3180  
Email: DL-UBSAgency@ubs.com

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 paragraph (b) below, shall be effective as provided in said paragraph (b). Any party hereto may change its address or telecopier number for notices and other communications hereunder by written notice to Borrower, the Agents, the Issuing Bank and the Swingline Lender.

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Bank hereunder may (subject to the provisions of this Section 10.01) 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 or the Issuing Bank pursuant to Article II if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Collateral Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it (including pursuant to the provisions of this Section 10.01); *provided* that approval of such procedures may be limited to particular notices or communications.

Each Loan Party hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent or the Lenders pursuant to this Agreement and any other Loan Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials (the "**Communications**"), by transmitting them in an electronic medium in a format reasonably acceptable to the Administrative Agent at DL-UBSAgency@ubs.com or at such other e-mail address(es) provided to Borrower from time to time or in such other form as the Administrative Agent shall require. In addition, each Loan Party agrees to continue to provide the Communications to the Administrative Agent in the manner specified in this Agreement or any other Loan Document or in such other form as the Administrative Agent shall require. Nothing in this Section 10.01 shall prejudice the right of the Agents, the Issuing Bank, any Lender or any Loan Party to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document or as any such Agent or the Issuing Bank, as the case may be, shall require.

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.

To the extent consented to by the Administrative Agent in writing from time to time, the Administrative Agent agrees that receipt of the Communications (other than any such Communication that (i) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default under this Agreement or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder) by the Administrative Agent at its e-mail address(es) set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents.

(c) **Platform.** Each Loan Party further agrees that any Agent may make the Communications available to the Lenders by posting the Communications on SyndTrak or a substantially similar secure electronic transmission system (the “**Platform**”). The Platform is provided “as is” and “as available.” The Agents do not warrant the accuracy or completeness of the Communications, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent in connection with the Communications or the Platform. In no event shall any Agent or any of its Related Parties have any liability to the Loan Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party’s or such Agent’s transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person’s gross negligence or willful misconduct.

(d) **Public/Private.** Each Loan Party hereby authorizes the Administrative Agent to distribute (i) to Private Siders all Communications, including any Communication that Borrower identifies in writing is to be distributed to Private Siders only so long as Borrower is given reasonable prior notice of any such distribution (“**Private Side Communications**”), and (ii) to Public Siders all Communications other than any Private Side Communication. Borrower represents and warrants that no Communication (other than Private Side Communications) contains any MNPI. Borrower agrees to designate as Private Side Communications only those Communications or portions thereof that it reasonably believes in good faith include MNPI. The Borrower agrees to use all commercially reasonable efforts not to designate any Communications provided under Section 5.01(a), (b) and (d) as Private Side Communications. “**Private Siders**” shall mean Lenders’ employees and representatives who have declared that they are authorized to receive MNPI. “**Public Siders**” shall mean Lenders’ employees and representatives who have not declared that they are authorized to receive MNPI; it being understood that Public Siders may be engaged in investment and other market-related activities with respect to Borrower’s or its affiliates’ securities or loans. “**MNPI**” shall mean material non-public information (within the meaning of United States federal securities laws) with respect to Borrower, its affiliates and any of their respective securities.

Each Lender acknowledges that United States federal and state securities laws prohibit any person from purchasing or selling securities on the basis of material, non-public information concerning the issuer of such securities or, subject to certain limited exceptions, from communicating such information to any other person. Each Lender confirms that it has developed procedures designed to ensure compliance with these securities laws.

Each Lender acknowledges that circumstances may arise that require it to refer to Communications that may contain MNPI. Accordingly, each Lender agrees that it will use commercially reasonable efforts to designate at least one individual to receive Private Side Communications on its behalf in compliance with its procedures and applicable law and identify such designee (including such designee's contact information) on such Lender's Administrative Questionnaire. Each Lender agrees to notify the Administrative Agent in writing from time to time of such Lender's designee's e-mail address to which notice of the availability of Private Side Communications may be sent by electronic transmission.

Each Lender that elects not to be given access to Private Side Communications does so voluntarily and, by such election, (i) acknowledges and agrees that the Agents and other Lenders may have access to Private Side Communications that such electing Lender does not have and (ii) takes sole responsibility for the consequences of, and waives any and all claims based on or arising out of, not having access to Private Side Communications.

**SECTION 10.02 Waivers; Amendment.**

(a) Generally. No failure or delay by any Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by this Section 10.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether any Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time. No notice or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

(b) Required Consents. Subject to Section 10.02(c) and (d), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Borrower and the Administrative Agent or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent, the Collateral Agent (in the case of any Security Document) and the Loan Party or Loan Parties that are party thereto, in each case with the written consent of the Required Lenders; *provided* that no such agreement shall be effective if the effect thereof would:

(i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that no amendment, modification, termination, waiver or consent with respect to any condition precedent, covenant or Default shall constitute an increase in the Commitment of any Lender);

(ii) reduce the principal amount or premium, if any, of any Loan (except in connection with a payment contemplated by clause (viii) below) or LC Disbursement or reduce the rate of interest thereon including by modification of any provision establishing a minimum rate (other than interest pursuant to Section 2.06(c)), or reduce any Fees payable hereunder, or change the form or currency of payment of any Obligation, without the written consent of each Lender directly affected thereby (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in the rate of interest for purposes of this clause (ii));

(iii) (A) change the scheduled final maturity of any Loan, or any scheduled date of payment (or permitted prepayment) of or the installment otherwise due on the principal amount of any Term Loan under Section 2.09, (B) postpone the date for payment of any Reimbursement Obligation or any interest, premium or fees payable hereunder, (C) reduce the amount of, waive or excuse any such payment (other than waiver of any increase in the interest rate pursuant to Section 2.06(c)), or (D) postpone the scheduled date of expiration of any Commitment or any Letter of Credit beyond the Revolving Maturity Date, in any case, without the written consent of each Lender directly affected thereby;

(iv) increase the maximum duration of Interest Periods hereunder, without the written consent of each Lender directly affected thereby;

(v) permit the assignment or delegation by Borrower of any of its rights or obligations under any Loan Document, without the written consent of each Lender;

(vi) release Borrower or all or substantially all of the Subsidiary Guarantors from their Guarantee (except as expressly provided in Article VII), or limit their liability in respect of such Guarantee, without the written consent of each Lender;

(vii) release all or a substantial portion of the Collateral from the Liens of the Security Documents or alter the relative priorities of the Secured Obligations entitled to the Liens of the Security Documents, in each case without the written consent of each Lender (it being understood that additional Classes of Loans pursuant to Section 2.20 or consented to by the Required Lenders may be equally and ratably secured by the Collateral with the then existing Secured Obligations under the Security Documents);

(viii) change Section 2.14(b), (c) or (d) in a manner that would alter the *pro rata* sharing of payments or setoffs required thereby or any other provision in a manner that would alter the *pro rata* allocation among the Lenders of Loan disbursements, including the requirements of Sections 2.02(a), 2.17(d) and 2.18(d), without the written consent of each Lender directly affected thereby;



(ix) change any provision of this Section 10.02(b) or Section 10.02(c) or (d), without the written consent of each Lender directly affected thereby (except for additional restrictions on amendments or waivers for the benefit of Lenders of additional Classes of Loans pursuant to Section 2.20 or consented to by the Required Lenders);

(x) change the percentage set forth in the definition of “Required Lenders,” “Required Class Lenders,” “Required Revolving Lenders” or any other provision of any Loan Document (including this Section) specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be);

(xi) change the application of prepayments as among or between Classes under Section 2.10(h), without the written consent of the Required Class Lenders of each Class that is being allocated a lesser prepayment as a result thereof (it being understood that the Required Lenders may waive, in whole or in part, any prepayment so long as the application, as between Classes, of any portion of such prepayment that is still required to be made is not changed and, if additional Classes of Term Loans under this Agreement pursuant to Section 2.20 or consented to by the Required Lenders are made, such new Term Loans may be included on a *pro rata* basis in the various prepayments required pursuant to Section 2.10(h)), in which case such additional Term Loans may be included in the definition of “Required Class Lenders” in respect of the reference to “each Class of Term Loans,” without the consent of the Required Lenders or the Required Class Lenders);

(xii) reserved;

(xiii) subordinate the Obligations to any other obligation, without the written consent of each Lender;

(xiv) change or waive any provision of Article X as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the written consent of such Agent;

(xv) change or waive any obligation of the Lenders relating to the issuance of or purchase of participations in Letters of Credit, without the written consent of the Administrative Agent and the Issuing Bank;

(xvi) change or waive any provision hereof relating to Swingline Loans (including the definition of “Swingline Commitment”), without the written consent of the Swingline Lender; or

(xvii) expressly change or waive any condition precedent in Section 4.02 to any Revolving Borrowing without the written consent of the Required Revolving Lenders.

Notwithstanding anything to the contrary herein:

(I) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except to the extent the consent of such Lender would be required under clause (i), (ii) or (iii) in the proviso to the first sentence of this Section 10.02(b);

(II) any Loan Document may be waived, amended, supplemented or modified pursuant to an agreement or agreements in writing entered into by Borrower and the Administrative Agent (without the consent of any Lender) solely to cure a defect or error, or to grant a new Lien for the benefit of the Secured Parties or extend an existing Lien over additional property;

(III) this Agreement may be amended as provided in Section 2.20 with the consent of the Borrower and the Administrative Agent without the consent of any Lender);

(IV) until the end of a reasonable period of time after the earlier of (x) the completion of Successful Syndication and (y) the date that is 60 days after the Closing Date, this Agreement may be amended pursuant to a written instrument or instruments executed by the Administrative Agent at the direction of the Arrangers (and without the consent of any other person (provided that the Arrangers shall have consulted with Borrower)) in order to implement the provisions of the Fee Letter under "Market Flex" (and subject to the limitations therein); *provided* that no such amendment with respect to any Class of Loans shall be adverse to the Lenders of such Class. A reduction in the aggregate amount of Commitments of any Class with (or without) a corresponding increase in the aggregate amount of Commitments of the other Class (whether such increase is provided by Lenders party to this Agreement on the Closing Date or by new Lenders that become party hereto) shall not be deemed adverse to the Lenders of any Class; it being understood that no Lender shall be required to increase its Commitment without its consent evidenced in writing. At the request of the Arrangers, Borrower shall execute each amendment pursuant to this clause (IV), but Borrower's failure or refusal to execute such amendment shall not affect the validity thereof;

(V) any amendment, modification, termination or waiver of any provision of Section 6.09(a) (other than definitions related to Section 6.09(a) and other than changes to the proviso in Section 8.01(d)), each of which for the avoidance of doubt shall require the written concurrence of the Required Lenders), shall be effective with only the written concurrence of the Required Revolving Lenders; and

(VI) any amendment that would extend the Term Loan Maturity Date, the Revolving Maturity Date or the Incremental Term Loan Maturity Date with respect to any Loans or Commitments, provide for any increased pricing (including fees) for any Lenders agreeing to extend their Loans or Commitments pursuant to the terms of such amendment and any corresponding modifications under this Agreement related thereto may be effected pursuant to an agreement or agreements in writing entered into by the Loan Parties, Administrative Agent, and those Lenders holding the Loans or Commitments who are directly and adversely affected thereby.

(c) Collateral. Without the consent of any other person, the applicable Loan Party or Parties and the Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any

Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Requirements of Law.

(d) Dissenting Lenders. If, in connection with any proposed change, waiver, discharge or termination of the provisions of this Agreement as contemplated by Section 10.02(b), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then Borrower shall have the right to replace all, but not less than all, of such non-consenting Lender or Lenders (so long as all non-consenting Lenders are so replaced) with one or more persons pursuant to Section 2.16(b), so long as at the time of such replacement each such new Lender consents to the proposed change, waiver, discharge or termination.

**SECTION 10.03 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent and their respective Affiliates (including the reasonable fees, charges and disbursements of one primary counsel for the Administrative Agent, the Collateral Agent and the Arrangers and one local counsel in each jurisdiction determined to be reasonably necessary or advisable by the Arrangers) in connection with the syndication of the credit facilities provided for herein (including the obtaining and maintaining of CUSIP numbers for the Loans), the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), including in connection with post-closing searches to confirm that security filings and recordings have been properly made and including any costs and expenses of the service provider referred to in Section 9.03, (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (iii) all documented out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank (including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent, the Collateral Agent, any Lender or the Issuing Bank), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.03, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit and (iv) all documentary and similar taxes and charges in respect of the Loan Documents.

(b) Indemnification by Borrower. Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), the Collateral Agent (and any sub-agent thereof) each Lender and the Issuing Bank, 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 reasonable and documented out-of-pocket losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of one primary counsel for all Indemnities, one local counsel in each relevant jurisdiction and, in the case of an actual or

perceived conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated) incurred by any Indemnitee or asserted against any Indemnitee by any party hereto or any third party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof, or 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 or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release or threatened Release of Hazardous Materials on, at, under or from any property owned, leased or operated by any Company at any time, or any Environmental Claim related in any way to any Company, 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 Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; *provided* that 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 and nonappealable judgment to have resulted solely from the gross negligence or willful misconduct of such Indemnitee or any controlled affiliate, officer or director of such Indemnitee.

(c) Reimbursement by Lenders. To the extent that Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section 10.03 to be paid by it to the Administrative Agent (or any sub-agent thereof), the Collateral Agent, the Issuing Bank, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof), the Issuing Bank, the Swingline Lender or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (such indemnity shall be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); *provided* that (i) the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof), the Swingline Lender or the Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof), the Swingline Lender or Issuing Bank in connection with such capacity and (ii) such indemnity for the Swingline Lender or the Issuing Bank shall not include losses incurred by the Swingline Lender or the Issuing Bank due to one or more Lenders defaulting in their obligations to purchase participations of Swingline Exposure under Section 2.17(d) or LC Exposure under Section 2.18(d) or to make Revolving Loans under Section 2.18(e) (it being understood that this proviso shall not affect the Swingline Lender's or the Issuing Bank's rights against any Defaulting Lender). The obligations of the Lenders under this paragraph (c) are subject to the provisions of Section 2.14. For purposes hereof, a Lender's "*pro rata* share" shall be determined based upon its share of the sum of the total Revolving Exposure, outstanding Term Loans and unused Commitments at the time.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Requirements of Law, no Loan Party shall assert, and each Loan Party 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, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in paragraph (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.

(e) Payments. All amounts due under this Section shall be payable not later than 3 Business Days after demand therefor.

#### **SECTION 10.04 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent, the Collateral Agent, the Issuing Lender, the Swingline Lender and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section 10.04, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section 10.04 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by Borrower shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

#### **(b) Assignments by Lenders.**

(i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) Borrower; *provided* that no consent of Borrower shall be required for an assignment to (1) a Lender, an Affiliate of a Lender or an Approved Fund or (2) if an Event of Default has occurred and is continuing or prior to the completion of the primary syndication of the Commitments and Loans (as determined by the Arrangers), any other assignee; *provided further* that when required, Borrower's consent shall be deemed to have been given unless Borrower objects to such assignment within five Business Days after receiving written notice of such assignment;

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment of (x) any Revolving Commitment to an assignee that is a Lender with a Revolving Commitment immediately prior to giving effect to such assignment or (y) all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the Issuing Bank and the Swingline Lender; *provided* that no consent of the Issuing Bank or the Swingline Lender shall be required for an assignment of all or any portion of a Term Loan.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of any assignment made in connection with the primary syndication of the Commitment and Loans by the Arrangers or an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans 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 or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5.0 million, in the case of any assignment in respect of Revolving Loans and/or Revolving Commitments, or \$1.0 million, in the case of any assignment in respect of Term Loans and/or Term Loan Commitments, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, Borrower otherwise consent (each such consent not to be unreasonably withheld or delayed);

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate tranches on a non-*pro rata* basis; and

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section 10.04, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement 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 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 of the 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 2.12, 2.13, 2.15 and 10.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.04(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of Borrower, shall maintain 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 the Commitments of, and principal amounts (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and Borrower, the Administrative Agent, the Issuing Bank and the Lenders shall 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 Borrower, the Issuing Bank (with respect to Revolving Lenders only), the Collateral Agent, the Swingline Lender (with respect to Revolving Lenders only) and any Lender (with respect to its own interest only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender sell participations to any person (other than a natural person or Borrower or any of its Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* 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 and (iii) Borrower, the Administrative Agent and the Lenders and Issuing Bank shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (i), (ii) or (iii) of the first proviso to Section 10.02(b) that affects such Participant. Subject to paragraph (e) of this Section, Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.15 (subject to such Participant satisfying the requirements of those Sections as if it were a Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; *provided* such Participant agrees to be subject to Section 2.14 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any person (including the identity of any Participant or any information relating to a Participant's interest in the obligations under this Agreement) except to the extent that such disclosure is necessary to establish that such interest is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) Limitations on Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 2.12, 2.13 and 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent (not to be unreasonably withheld or delayed).

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. In the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of Borrower or the Administrative Agent, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Requirements of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.



#### **SECTION 10.05 Survival of Agreement.**

All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.12, 2.14, 2.15 and Article X (other than Section 10.12) shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the payment of the Reimbursement Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

#### **SECTION 10.06 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, any separate letter agreements with respect to fees payable to the Administrative Agent (including the "Market Flex" provisions in the Fee Letter) and the "Syndication" and "Clear Market" provisions of the Commitment Letter 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 telecopier or other electronic transmission (i.e. a "pdf" or "tif" document) shall be effective as delivery of a manually executed counterpart of this Agreement.

#### **SECTION 10.07 Severability.**

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

#### **SECTION 10.08 Right of Setoff.**

If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law but in each case subject to the last sentence of this section, 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 and other

obligations (in whatever currency) at any time owing by such Lender, the Issuing Bank or any such Affiliate to or for the credit or the account of Borrower or any other Loan Party against any and all of the obligations of Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the Issuing Bank, irrespective of whether or not such Lender or the Issuing Bank shall have made any demand under this Agreement or any other Loan Document and although such obligations of Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the Issuing Bank different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank or their respective Affiliates may have. Each Lender and the Issuing Bank agrees to notify 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. Each Lender and the Issuing Bank (in each case on behalf of itself and its Affiliates) agrees that it shall not exercise any of its rights of setoff and application without the prior written consent of the Collateral Agent.

**SECTION 10.09 Governing Law; Jurisdiction; Consent to Service of Process.**

(a) Governing Law. This Agreement and the transactions contemplated hereby, and any and all claims, controversies, disputes, or causes of action between the parties under or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein), and the transactions contemplated hereby and thereby, or the facts or circumstances leading to the execution of this Agreement or any other Loan Document, whether in contract, tort or otherwise, shall be construed in accordance with and governed by the laws (including statutes of limitation) of the State of New York, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

(b) Submission to Jurisdiction. Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, 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 such New York State court or, to the fullest extent permitted by applicable law, in 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 or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Venue. Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable Requirements of Law, any objection which 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 other Loan Document in any court referred to in Section 10.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Requirements of Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than telecopier) in Section 10.01. Nothing in this Agreement or any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by applicable Requirements of Law.

**SECTION 10.10 Waiver of Jury Trial.**

Each Loan Party hereby waives, to the fullest extent permitted by applicable Requirements of Law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement, any other Loan Document or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

**SECTION 10.11 Headings.**

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**SECTION 10.12 Treatment of Certain Information; Confidentiality.**

Each of the Administrative Agent, the Lenders and the Issuing Bank agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other 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 Governmental Authority or regulatory authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Requirements of Law or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 10.12, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations or (iii) any rating agency for the purpose of obtaining a credit rating applicable to any Lender, (g) with the consent of Borrower or

(h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, the Issuing Bank or any of their respective Affiliates from a source other than Borrower that is not to the knowledge of such recipient subject to confidentiality obligations to Borrower. For purposes of this Section, “**Information**” means all information received from Borrower or any of its Subsidiaries relating to Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Bank on a nonconfidential basis prior to disclosure by Borrower or any of its Subsidiaries. Any person required to maintain the confidentiality of Information as provided in this Section 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.

**SECTION 10.13 USA PATRIOT Act Notice and Customer Identification Information and Verification.**

Each Lender that is subject to the Bank Secrecy Act, as amended by the USA PATRIOT Act, and the Administrative Agent (for itself and not on behalf of any Lender) hereby notify Borrower that pursuant to the customer identification program and “know your customer” regulations and requirements of the Bank Secrecy Act, they are required to obtain information and documentation, verify identity, and record information that identifies each Loan Party, which information includes the name, street address and taxpayer or other government identification number (and other identifying information or documentation in the event this information is insufficient to comply with the information or verification requirements) that will allow such Lender or the Administrative Agent, as applicable, to identify and verify the identity of each Loan Party. This information and any documentation must be delivered to the Lenders and the Administrative Agent no later than five days prior to the Closing Date and thereafter promptly upon request. This notice is given in accordance with the requirements of the Bank Secrecy Act and is effective as to the Lenders and the Administrative Agent.

**SECTION 10.14 Interest Rate Limitation.**

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Requirements of Law (collectively, the “**Charges**”), shall exceed the maximum lawful rate (the “**Maximum Rate**”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable Requirements of Law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

**SECTION 10.15 Lender Addendum.**

Each Lender to become a party to this Agreement as of the Closing Date shall do so by delivering to the Administrative Agent a Lender Addendum duly executed by such Lender, Borrower and the Administrative Agent.

**SECTION 10.16 Obligations Absolute.**

To the fullest extent permitted by applicable Requirements of Law, all obligations of the Loan Parties hereunder shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Loan Party;
- (b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any Loan Party;
- (c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;
- (d) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations;
- (e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or
- (f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Loan Parties.

*[Signature Pages Follow]*

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

DUCOMMUN INCORPORATED

By: /s/ Joseph Bellino

Name: Joseph Bellino

Title: Vice President and Chief Financial Officer

CMP DISPLAY SYSTEMS, INC.

DUCOMMUN AEROSTRUCTURES, INC.

DUCOMMUN TECHNOLOGIES, INC.

MILTEC CORPORATION

DUCOMMUN AEROSTRUCTURES NEW YORK, INC.

DUCOMMUN LABARGE TECHNOLOGIES, INC.

LABARGE/STC, INC.

LABARGE ELECTRONICS, INC.

LABARGE ACQUISITION COMPANY, INC.

By: /s/ Joseph Bellino

Name: Joseph Bellino

Title: Vice President

COMPOSITE STRUCTURES, LLC

DUCOMMUN AEROSTRUCTURES MEXICO, LLC

By: Ducommun AeroStructures, Inc., its Sole Member

By: /s/ Joseph Bellino

Name: Joseph Bellino

Title: Vice President

UBS SECURITIES LLC, as an Arranger

By: /s/ Mary E. Evans

Name: Mary E. Evans

Title: Attorney-in-Fact

By: /s/ Irja R. Otsa

Name: Irja R. Otsa

Title: Associate Director, Banking Products Services, US

UBS AG, STAMFORD BRANCH, as an Issuing Bank,  
Administrative Agent and Collateral Agent

By: /s/ Mary E. Evans

Name: Mary E. Evans

Title: Associate Director, Banking Products Services, US

By: /s/ Irja R. Otsa

Name: Irja R. Otsa

Title: Associate Director, Banking Products Services, US

UBS LOAN FINANCE LLC, as Swingline Lender

By: /s/ Mary E. Evans

Name: Mary E. Evans

Title: Associate Director, Banking Products Services, US

By: /s/ Irja R. Otsa

Name: Irja R. Otsa

Title: Associate Director, Banking Products Services, US

By: /s/ Michael Speller

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Name: Michael Speller

Title: Managing Director



By: Geoff Anfuso

Name: Geoff Anfuso

Title: SVP

By: /s/ Joseph Eitel

Name: Joseph Eitel

Title: SVP

## Amortization Table

Date	Term Loan Amount
September 30, 2011	\$ 475,000
December 31, 2011	\$ 475,000
March 31, 2012	\$ 475,000
June 30, 2012	\$ 475,000
September 30, 2012	\$ 475,000
December 31, 2012	\$ 475,000
March 31, 2013	\$ 475,000
June 30, 2013	\$ 475,000
September 30, 2013	\$ 475,000
December 31, 2013	\$ 475,000
March 31, 2014	\$ 475,000
June 30, 2014	\$ 475,000
September 30, 2014	\$ 475,000
December 31, 2014	\$ 475,000
March 31, 2015	\$ 475,000
June 30, 2015	\$ 475,000
September 30, 2015	\$ 475,000
December 31, 2015	\$ 475,000
March 31, 2016	\$ 475,000
June 30, 2016	\$ 475,000
September 30, 2016	\$ 475,000
December 31, 2016	\$ 475,000
March 31, 2017	\$ 475,000
Term Loan Maturity Date	\$ 179,075,000

**Existing Letters of Credit**

1. \$150,000.00. Expiry 04/30/12; Beneficiary: Federal Insurance Company (Chubb)
2. \$250,000.00. Expiry 04/30/12; Beneficiary: The Travelers Indemnity Company

**Schedule 1.01(a)**

**Refinancing Indebtedness to be Repaid**

Indebtedness pursuant to that certain Loan Agreement dated as of December 22, 2008 (as amended, restated, supplemented or otherwise modified through the date hereof) among LaBarge, Inc. (as predecessor in interest of Ducommun LaBarge Technologies, Inc.), LaBarge Electronics, Inc., LaBarge Acquisition Company, Inc., the Lenders from time to time party thereto and U.S. Bank National Association, as the Agent, and the related interest rate swap agreement between LaBarge Acquisition Company, Inc. and U.S. Bank National Association.

Indebtedness pursuant to that certain Second Amended and Restated Credit Agreement dated as of June 26, 2009 (as amended, restated, supplemented or otherwise modified through the date hereof) among the Borrower, each Lender from time to time party thereto and Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, including the letter of credit facility thereunder.

**Schedule 1.01(b)**

**Subsidiary Guarantors**

Ducommun AeroStructures, Inc., a Delaware corporation

Ducommun Technologies, Inc., an Arizona corporation

CMP DISPLAY SYSTEMS, INC., a California corporation

COMPOSITE STRUCTURES, LLC, a Delaware limited liability company

Ducommun Aerostructures New York, Inc., a New York corporation

MILTEC CORPORATION, an Alabama corporation

Ducommun AeroStructures Mexico, LLC, a Delaware limited liability company

Ducommun LaBarge Technologies, Inc., a Delaware corporation

LaBarge/STC, Inc., a Texas corporation

LaBarge Electronics, Inc., a Missouri corporation

LaBarge Acquisition Company, Inc., a Missouri corporation

**Schedule 3.03**

**Governmental Approvals; Compliance with Laws**

None.

**Schedule 3.06(c)**

**Violations or Proceedings**

None.



**Schedule 3.17**

**Employee Benefit Plans**

The Borrower has three unfunded supplemental retirement plans. The first plan was suspended in 1986, but continues to cover certain former executives. The second plan was suspended in 1997, but continues to cover certain current and retired directors. The third plan covers one former executive. The accumulated benefit obligations under these plans at December 31, 2010 and December 31, 2009 were \$1,490,000 and \$1,637,000, respectively, which are included in accrued liabilities.

**Schedule 3.18**

**Environmental Matters**

None.

**Schedule 3.19**

**Insurance**

Insurance and Limits  
(\$millions)

Borrower and all its Subsidiaries

Aviation Products Liability	QBE Line Slip	\$150.0
Property	FM Global	487.0
GL/Auto - Primary/Umbrella	One Beacon	20.0
GL/Auto - Excess	Chubb	20.0
GL/Auto - Excess	Continental Casualty	15.0
D&O Primary	St. Paul	10.0
D&O Excess	Chubb	10.0
D&O Side A	ACE	10.0
Crime	Chubb	5.0
Fiduciary Liability	Chubb	10.0

Borrower (excluding Ducommun LaBarge Technologies, Inc. and its Subsidiaries and MILTEC CORPORATION)

Workers Compensation	Zurich	
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MILTEC CORPORATION

Workers Compensation	State Fund of Alabama/Sentry	
Employment Practices Liability	Hartford	2.0

Ducommun LaBarge Technologies, Inc. and its Subsidiaries

Workers Compensation	Hartford/Captive (Archway)	
Employment Practices Liability	Chubb	5.0

**Schedule 3.21**

**Acquisition Documents**

Agreement and Plan of Merger, dated as of April 3, 2011, among Ducommun Incorporated, DLBMS, Inc. and LaBarge, Inc. (as predecessor in interest of Ducommun LaBarge Technologies, Inc.)

Employment Agreement, dated as of April 3, 2011, between LaBarge, Inc. (as predecessor in interest of Ducommun LaBarge Technologies, Inc.) and Craig E. LaBarge.

Employment Agreement, dated as of April 3, 2011, between LaBarge, Inc. (as predecessor in interest of Ducommun LaBarge Technologies, Inc.) and Donald H. Nonnenkamp.

Employment Agreement, dated as of April 3, 2011, between LaBarge, Inc. (as predecessor in interest of Ducommun LaBarge Technologies, Inc.) and Randy L. Buschling.

Employment Agreement, dated as of April 3, 2011, between LaBarge, Inc. (as predecessor in interest of Ducommun LaBarge Technologies, Inc.) and Teresa K. Huber.

Employment Agreement, dated as of April 3, 2011, between LaBarge, Inc. (as predecessor in interest of Ducommun LaBarge Technologies, Inc.) and John R. Parmley.

Employment Agreement, dated as of April 3, 2011, between LaBarge, Inc. (as predecessor in interest of Ducommun LaBarge Technologies, Inc.) and William D. Bitner.

Voting Agreement dated as of April 3, 2011, among Ducommun Incorporated and certain stockholders of LaBarge, Inc.

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**Schedule 4.01(g)**

**Local Counsel**

Kutak Rock, LLP, Scottsdale, AZ

Balch & Bingham LLP, Birmingham, AL

Armstrong Teasdale LLP, St. Louis, MO

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**Schedule 4.01(n)(vi)**

**Landlord Access Agreements**

Spirit Aerosystems, 3355 S. Oliver, Wichita, KS

AMI Metals, 10606 Commerce Way, Fontana, CA

**Schedule 4.01(o)(iii)**

**Title Insurance Amounts**

<b><u>Property Address</u></b>	<b><u>Fair Market Value</u></b>
268/316 E. Gardena Blvd. Gardena, CA 90248	\$ 17,250,000
1885 N. Batavia St. Orange, CA 92865	\$ 11,500,000
801 Royal Oaks Dr. Monrovia, CA 91016	\$ 11,500,000
3333 Main Street Parsons, KS 67357	\$ 1,437,500
2222 East Pensar Drive Appleton, WI 54911	\$ 3,599,500
11616 East 51 <sup>st</sup> St. Tulsa, OK 74146	\$ 2,449,500
810 Champlin Avenue Berryville, AR 72616	\$ 2,403,500
1505 Maiden Lane Joplin, MO 64801	\$ 2,219,500

**Schedule 5.14**

**Post-Closing Matters**

1. Within 30 days after the Closing Date, deliver a property insurance certificate to the Collateral Agent that (a) is reasonably satisfactory to the Collateral Agent, (b) names the Collateral Agent as lenders' loss payee, (c) reflects an expiration date of not earlier than June 28, 2012 and (d) contains an endorsement thereto reasonably satisfactory to the Collateral Agent (it being understood that the form of endorsement previously provided to counsel to the Arrangers is reasonably satisfactory to the Collateral Agent).
2. Within 45 days after the Closing Date, deliver a fully executed securities account control agreement that is reasonably satisfactory to the Collateral Agent in respect of the Borrower's money market account at Bank of America described as "Fund #238 Money Market Reserves" in the Perfection Certificate, unless the Collateral Agent determines in its sole discretion that the benefit of obtaining such securities account control agreement is outweighed by the burden of obtaining such agreement.
3. If the deposit accounts in the name of LaBarge, Inc., LaBarge Electronics, Inc., LaBarge Acquisition Company, Inc. or LaBarge/STC, Inc. immediately prior to the Closing Date maintained at US Bank are not closed within 60 days after the Closing Date, then, in respect of any such accounts that do not constitute Excluded Accounts (as defined in the Security Agreement), the Borrower shall within 30 days after such 60<sup>th</sup> day either (a) close such accounts or (b) enter into control agreements over such accounts in favor of the Collateral Agent that are reasonably satisfactory to the Collateral Agent.
4. To the extent any of the deliverables required by Section 4.01(q)(i), (ii), (iii), (iv), (v), (vi) or (vii) with respect to the Mortgaged Properties have not been delivered (or executed and delivered as the case may be) on or prior to the Closing Date to the Collateral Agent, deliver (or execute and deliver, as the case may be) such deliverables to the Collateral Agent within 45 days after the Closing Date, in each case in form and substance reasonably satisfactory to the Collateral Agent.
5. Deliver, for each relevant Mortgaged Property at the time delivery of a fully executed Mortgage reasonably satisfactory to the Collateral Agent with respect to such Mortgaged Property is made in connection with Section 4.01(q)(i) pursuant to the immediately preceding clause 4, a favorable and executed written opinion of (a) Gibson Dunn & Crutcher LLP (California), (b) Armstrong Teasdale LLP (Missouri), (c) Powell, Brewer & Reddick, LLP (Kansas), (d) Reinhart Boemer Van Deuren s.c. (Wisconsin), (e) McAfee & Taft (Oklahoma) and/or (f) Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. (Arkansas), in each case in form and substance reasonably satisfactory to the Collateral Agent.



**Schedule 6.01(b)**

**Existing Indebtedness**

In connection with the acquisition of Ducommun Aerostructures New York, Inc. in December 2008, the Borrower issued a promissory note in the initial principal amount of \$7,000,000 with interest of 5% per annum payable annually on each anniversary of the closing date (December 23). Principal of the promissory note in the amount of \$4,000,000 was paid on June 23, 2010 and \$3,000,000 is payable on December 23, 2013.

**Schedule 6.02(c)**

**Existing Liens**

None.

**Schedule 6.04(b)**

**Existing Investments**

Ducommun Technologies, Inc. owns 100% of Ducommun Technologies (Thailand) Ltd.

MILTEC CORPORATION owns 49% of Joint Venture Applied Science and Technology, LLC.

Ducommun LaBarge Technologies, Inc. owns 940,000 shares of Norwood Abbey, Ltd.

Ducommun LaBarge Technologies, Inc. owns 1 common share of Archway Insurance Ltd.

**Schedule 6.08**

**Transactions with Affiliates**

None.

[Form of]

ADMINISTRATIVE QUESTIONNAIRE

DUCOMMUN INCORPORATED

Agent Address: UBS AG, Stamford Branch  
677 Washington Boulevard  
Stamford, Connecticut 06901

Return form to: \_\_\_\_\_  
Telephone: (203) 719-3000  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

It is very important that **all** of the requested information be completed accurately and that this questionnaire be returned promptly. If your institution is sub-allocating its allocation, please fill out an administrative questionnaire for each legal entity.

Legal Name of Lender to appear in Documentation:

\_\_\_\_\_

Signature Block Information: \_\_\_\_\_

- Signing Credit Agreement Yes    No
- Coming in via Assignment Yes    No

Type of Lender: \_\_\_\_\_

(Bank, Asset Manager, Broker/Dealer, CLO/CDO; Finance Company, Hedge Fund, Insurance, Mutual Fund, Pension Fund, Other Regulated Investment Fund, Special Purpose Vehicle, Other - please specify)

Lender Parent: \_\_\_\_\_

<u>Domestic Address</u>	<u>Eurodollar Address</u>

**Contacts/Notification Methods: Borrowings, Paydowns, Interest, Fees, etc.**

	Primary Credit Contact	Secondary Credit Contact
Name:		
Company:		
Title:		
Address:		
Telephone:		
Facsimile:		
E-Mail Address:		

	Primary Operations Contact	Secondary Operations Contact
Name:		
Company:		
Title:		
Address:		
Telephone:		
Facsimile:		
E-Mail Address:		

	Bid Contact	L/C Contact
Name:		
Company:		
Title:		
Address:		
Telephone:		
Facsimile:		
E-Mail Address:		

**Lender's Domestic Wire Instructions**

Bank Name: \_\_\_\_\_  
ABA/Routing No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
FFC Account Name: \_\_\_\_\_  
FFC Account No.: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Reference: \_\_\_\_\_

**Lender's Foreign Wire Instructions**

Currency: \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
Swift/Routing No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
FFC Account Name: \_\_\_\_\_  
FFC Account No.: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Reference: \_\_\_\_\_

**Agent's Wire Instructions**

**[The Agent's wire instructions will be disclosed at the time of closing.]**

Bank Name: \_\_\_\_\_  
ABA/Routing No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
FFC Account Name: \_\_\_\_\_  
FFC Account No.: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Reference: \_\_\_\_\_

## Tax Documents

### NON-U.S. LENDER INSTITUTIONS:

#### I. Corporations:

If your institution is incorporated outside of the United States for U.S. federal income tax purposes, and is the beneficial owner of the interest and other income it receives, you must complete one of the following three tax forms, as applicable to your institution: **a.) Form W-8BEN** (*Certificate of Foreign Status of Beneficial Owner*), **b.) Form W-8ECI** (*Income Effectively Connected to a U.S. Trade or Business*), or **c.) Form W-8EXP** (*Certificate of Foreign Government or Governmental Agency*).

A U.S. taxpayer identification number is required for any institution submitting Form W-8ECI. It is also required on Form W-8BEN for certain institutions claiming the benefits of a tax treaty with the U.S. Please refer to the instructions when completing the form applicable to your institution. In addition, please be advised that U.S. tax regulations do not permit the acceptance of faxed forms. **An original tax form must be submitted.**

#### II. Flow-Through Entities:

If your institution is organized outside the U.S., and is classified for U.S. federal income tax purposes as either a Partnership, Trust, Qualified or Non-Qualified Intermediary, or other non- U.S. flow-through entity, an original **Form W-8IMY** (*Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding*) must be completed by the intermediary together with a withholding statement. Flow-through entities other than Qualified Intermediaries are required to include tax forms for each of the underlying beneficial owners.

Please refer to the instructions when completing this form. In addition, please be advised that U.S. tax regulations do not permit the acceptance of faxed forms. **Original tax form(s) must be submitted.**

### U.S. LENDER INSTITUTIONS:

If your institution is incorporated or organized within the United States, you must complete and return **Form W-9** (*Request for Taxpayer Identification Number and Certification*). **Please be advised that we request that you submit an original Form W-9.**

**Pursuant to the language contained in the tax section of the Credit Agreement, the applicable tax form for your institution must be completed and returned prior to the first payment of income. Failure to provide the proper tax form when requested may subject your institution to U.S. tax withholding.**



[Form of]  
**ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “**Assignor**”) and [Insert name of Assignee] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement defined below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including participations in any Letters of Credit and Swingline Loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
 [and is an Affiliate/Approved Fund of [identify Lender]<sup>1</sup>]
3. Borrower: Ducommun Incorporated, a Delaware corporation
4. Administrative Agent: UBS AG, Stamford Branch, as the administrative agent under the Credit Agreement

<sup>1</sup> Select as applicable.

5. Credit Agreement: The Credit Agreement dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among Ducommun Incorporated, a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, “**Arrangers**”), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, “**Swingline Lender**”), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, “**Administrative Agent**”) for the Lenders and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, “**Documentation Agent**”), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, “**Syndication Agent**”) and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit.

6. Assigned Interest:

<u>Facility Assigned</u>	<u>Aggregate Amount of Commitment/Loans for all Lenders</u>	<u>Amount of Commitment/Loans Assigned</u>	<u>Percentage Assigned of Commitment/Loans<sup>2</sup></u>
Term Loans	\$	\$	%
Revolving Loans	\$	\$	%

<sup>2</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

Effective Date: \_\_\_\_\_, 201\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]<sup>3</sup>

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title:

ASSIGNEE  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title:

Consented to and Accepted:

DUCOMMUN INCORPORATED<sup>4</sup>

By: \_\_\_\_\_  
Name:  
Title:

UBS AG, STAMFORD BRANCH,  
as Administrative Agent [and an Issuing Bank]<sup>5</sup>

By: \_\_\_\_\_  
Name:  
Title:

<sup>3</sup> This date may not be fewer than 5 Business days after the date of assignment unless the Administrative Agent otherwise agrees.

<sup>4</sup> To be completed to the extent consent is required under Section 10.04(b) of the Credit Agreement.

<sup>5</sup> Reference to Issuing Bank required for an assignment of Revolving Commitments.

By: \_\_\_\_\_  
Name:  
Title:

[BANK OF AMERICA, N.A.,  
as an Issuing Bank

By: \_\_\_\_\_  
Name:  
Title: ]<sup>6</sup>

[UBS LOAN FINANCE LLC,  
as Swingline Lender

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title: ]<sup>7</sup>

<sup>6</sup> Reference to Issuing Bank required for an assignment of Revolving Commitments.

<sup>7</sup> Reference to Swingline Lender required for an assignment of Revolving Commitments.

DUCOMMUN INCORPORATED  
CREDIT AGREEMENTSTANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

## 1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, (vi) if it is not already a Lender under the Credit Agreement, attached to the Assignment and Assumption is an Administrative Questionnaire in the form of Exhibit A to the Credit Agreement, (vii) the Administrative Agent has received a processing and recordation fee of \$3,500 as of the Effective Date and (viii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to Section 2.15 of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor 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 the Loan Documents and (ii) it will perform in accordance with their terms all of the obligations that by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts that have accrued to but excluding the Effective Date and to the Assignee for amounts that have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be construed in accordance with and governed by, the law of the State of New York without regard to conflicts of principles of law that would require the application of the laws of another jurisdiction.

[Form of]  
**BORROWING REQUEST**

UBS AG, Stamford Branch,  
 as Administrative Agent for  
 the Lenders referred to below,  
 677 Washington Boulevard  
 Stamford, Connecticut 06901

Attention: [        ]

Re: Ducommun Incorporated

[Date]

Ladies and Gentlemen:

Reference is made to the Credit Agreement dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among DUCOMMUN INCORPORATED, a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, “**Arrangers**”), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, “**Swingline Lender**”), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, “**Administrative Agent**”) for the Lenders and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, “**Documentation Agent**”), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, “**Syndication Agent**”) and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit. Borrower hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a Borrowing under the Credit Agreement, and in that connection sets forth below the terms on which such Borrowing is requested to be made:

(A) Class of Borrowing

[Revolving Borrowing]  
 [Term Borrowing]  
 [Swingline Loan]

(B) Principal amount of Borrowing<sup>8</sup>

\_\_\_\_\_

<sup>8</sup> ABR Loans must be in an amount that is at least \$500,000 and an integral multiple of \$100,000 or equal to the remaining available balance of the applicable Commitments. Eurodollar Loans must be in an amount that is at least \$1,000,000 and an integral multiple of \$100,000 or equal to the remaining available balance of the applicable Commitments.

(C) Date of Borrowing (which is a Business Day) \_\_\_\_\_  
(D) Type of Borrowing [ABR] [Eurodollar]<sup>9</sup>  
(E) Interest Period and the last day thereof<sup>10</sup> \_\_\_\_\_  
(F) Funds are requested to be disbursed to Borrower's  
account with UBS AG, Stamford Branch (Account  
No. \_\_\_\_\_).

Borrower hereby represents and warrants that the conditions to lending specified in Sections [4.02(b), (c), (d) and (e)]<sup>11</sup> of the Credit Agreement are satisfied as of the date hereof.

[Signature Page Follows]

<sup>9</sup> Shall be ABR for Swingline Loans.

<sup>10</sup> Shall be subject to the definition of "**Interest Period**" in the Credit Agreement.

<sup>11</sup> Modify to include only Section 4.02(c) solely in respect of borrowings to be made on the Closing Date.



By: \_\_\_\_\_

Name:

Title: [Responsible Officer]

[Form of]  
**COMPLIANCE CERTIFICATE**

I, [ ], the [Financial Officer] of Ducommun Incorporated (in such capacity and not in my individual capacity), hereby certify that, with respect to that certain Credit Agreement dated as of June 28, 2011 (as it may be amended, modified, extended or restated from time to time, the “**Credit Agreement**”; all of the defined terms in the Credit Agreement are incorporated herein by reference) among Ducommun Incorporated, a Delaware corporation, as borrower (the “**Borrower**”), the Subsidiary Guarantors party thereto, the Lenders party thereto, UBS Securities LLC and Credit Suisse Securities (USA) LLC, as Arrangers, UBS Loan Finance LLC, as Swingline Lender, UBS AG, Stamford Branch, as an Issuing Bank, Administrative Agent and Collateral Agent, Wells Fargo Bank, National Association, as Documentation Agent, Credit Suisse Securities (USA) LLC, as Syndication Agent, and Bank of America, N.A., as an Issuing Bank:

- a. Attached hereto as Schedule 1 are detailed calculations<sup>12</sup> demonstrating compliance by the Loan Parties with the financial covenants contained in Sections 6.09(a)<sup>13</sup>, 6.09(b)<sup>14</sup> and 6.09(c)<sup>15</sup> of the Credit Agreement. The Loan Parties are in compliance with such Sections as of the date hereof.
- b. Attached hereto as Schedule 2 are detailed calculations setting forth the Borrower’s Excess Cash Flow.<sup>16</sup>
- c. Attached hereto as Schedule 3 is the report of [accounting firm].<sup>17</sup>

<sup>12</sup> Which calculations shall be in reasonable detail satisfactory to the Administrative Agent and shall include, among other things, an explanation of the methodology used in such calculations and a breakdown of the components of such calculations.

<sup>13</sup> If the financial covenant contained in Section 6.09(a) of the Credit Agreement is not required to be tested as of the date of the Compliance Certificate pursuant to the terms of the Credit Agreement, include instead a certification as to such fact. The first quarter for testing this covenant is the fiscal quarter ending October 1, 2011.

<sup>14</sup> Calculations to demonstrate compliance with Section 6.09(b) to accompany annual financial statements only (beginning with the fiscal year ending December 31, 2011).

<sup>15</sup> The first quarter for testing this covenant is the fiscal quarter ending October 1, 2011.

<sup>16</sup> To accompany annual financial statements only (beginning with the fiscal year ending December 31, 2012).

<sup>17</sup> To accompany annual financial statements only (beginning with the fiscal year ending December 31, 2011). The report must opine or certify that, with respect to its regular audit of such financial statements, which audit was conducted in accordance with generally accepted accounting standards, the accounting firm obtained no knowledge that any Default insofar as it relates to financial or accounting matters has occurred or, if in the opinion of such accounting firm such a Default has occurred, specifying the nature and extent thereof.

d. The Borrower was in compliance with each of the covenants set forth in Sections 6.09 of the Credit Agreement at all times during and since [ ].

e. No Default has occurred under the Credit Agreement which has not been previously disclosed, in writing, to the Administrative Agent pursuant to a Compliance Certificate.<sup>18</sup>

<sup>18</sup>

If a Default shall have occurred, an explanation specifying the nature and extent of such Default shall be provided on a separate page together with an explanation of the corrective action taken or proposed to be taken with respect thereto (include, as applicable, information regarding actions, if any, taken since prior certificate).

Dated this [ ] day of [ ], 201[ ].

DUCOMMUN INCORPORATED

By: \_\_\_\_\_

Name:

Title: [Financial Officer]

D-3

SCHEDULE 1

Financial Covenants

(A) **Maximum Total Leverage Ratio:** Consolidated Indebtedness to Consolidated EBITDA

<b>Consolidated Indebtedness</b> as of [     ], 201[     ]	_____
<b>Consolidated EBITDA calculation</b> <sup>19</sup> : (i) + (ii) <sup>20</sup> – (iii) <sup>21</sup>	_____
(i) Consolidated Net Income for the Test Period ended [     ], 201[     ]	_____
(ii) (a) Consolidated Interest Expense for such period, <i>plus</i>	_____
(b) Consolidated Amortization Expense for such period, <i>plus</i>	_____
(c) Consolidated Depreciation Expense for such period, <i>plus</i>	_____
(d) Consolidated Tax Expense for such period, <i>plus</i>	_____

<sup>19</sup> Other than for purposes of calculating Excess Cash Flow, Consolidated EBITDA shall be calculated on a Pro Forma Basis (including Pro Forma Cost Savings if applicable) to give effect to the Merger, any Permitted Acquisition and Asset Sales (other than any dispositions in the ordinary course of business) consummated at any time on or after the first day of the Test Period and prior to the date of determination as if the Merger and each such Permitted Acquisition had been effected on the first day of such period and as if each such Asset Sale had been consummated on the day prior to the first day of such period. Please see the definition of “Pro Forma Cost Savings” in the Credit Agreement for an explanation of what may be included in Consolidated EBITDA (and any required supporting documentation) to the extent Consolidated EBITDA is being calculated after giving effect to any Pro Forma Cost Savings. Consolidated EBITDA shall be calculated without regard to (1) the cumulative effect of a change in accounting principles during such period and (2) effects of adjustments pursuant to GAAP resulting from the application of purchase accounting in relation to the Merger or any Permitted Acquisition.

<sup>20</sup> Items in (ii) are to be added in each case only to the extent deducted in determining Consolidated Net Income and without duplication.

<sup>21</sup> The aggregate amount of items in (iii) are to be subtracted to the extent increasing Consolidated Net Income.

- (e) (i) costs and expenses directly incurred in connection with the Transactions, and (ii) costs and expenses in respect of any employment agreement (including severance costs), change in control (including with respect to the long term incentive program of the Acquired Business), stock based compensation or employee incentive agreement in respect of the Transactions (not to exceed \$10.0 million), plus \_\_\_\_\_
- (f) the aggregate amount of all other non-cash charges, expenses or losses reducing Consolidated Net Income (excluding any non-cash charge, expense or loss that results in an accrual of a reserve for cash charges in any future period and any non-cash charge, expense or loss relating to write-offs, write-downs or reserves with respect to accounts or inventory) for such period, *plus* \_\_\_\_\_
- (g) (i) fees, expenses, financing costs, severance costs and management bonuses incurred or paid in connection with any Permitted Acquisition after the Closing Date, including attorneys' fees and (ii) costs and expenses in respect of any employment agreement, change in control, stock based compensation or employee incentive agreement or plan or other employee benefit agreement or plan arising in connection with a Permitted Acquisition after the Closing Date or the occurrence of a change in control as defined under such compensation agreement or plan; *provided* that amounts under this clause (g) shall not exceed \$5.0 million per fiscal year, *plus* \_\_\_\_\_
- (h) reasonable and customary fees, expenses, premiums and other charges in connection with the issuance or repayment of Indebtedness, the issuance of Equity Interests, any refinancing transaction, amendment or other modification of any debt instrument, the making of any Investment, any Asset Sale or disposition not constituting an Asset Sale, in each case to the extent permitted by the terms of this Agreement (in each case whether or not consummated and in each case including reasonable and customary investment banking and attorneys' fees), *plus* \_\_\_\_\_
- (i) any losses attributable to the extinguishment of any Hedging Obligations or other derivative instruments, *plus* \_\_\_\_\_
- (j) any extraordinary or non-recurring loss, expense or charge recorded or recognized by Borrower or any of its Subsidiaries during such period; *provided* that the amount of any non-recurring loss, expense or charge during any period shall not exceed \$5.0 million, *plus* \_\_\_\_\_
- (k) any net loss from discontinued operations and any net loss on disposal of discontinued operations. \_\_\_\_\_

(iii) (a) all non-cash items increasing Consolidated Net Income (other than (1) the accrual of revenue or recording of receivables in the ordinary course of business and (2) any non-cash items to be received in cash in any future period or any non-cash income or gain that results from a reversal of write-offs, write-downs and reserves with respect to accounts or inventory) for such period, (b) any gains attributable to the extinguishment of any Hedging Obligations or other derivative instruments, (c) any extraordinary or non-recurring gain recorded or recognized by Borrower or any of its Subsidiaries during such period and (d) any net gain from discontinued operations or any net gain on disposal of discontinued operations.

**Consolidated EBITDA<sup>22</sup>:**

<b>Consolidated Indebtedness to Consolidated EBITDA =</b>	[ ]:1.00
<b>Covenant Requirement for Test Period Ending:</b>	<b>May not exceed:</b>
October 1, 2011	5.25 to 1.0
December 31, 2011	5.25 to 1.0
March 31, 2012	5.25 to 1.0
June 30, 2012	5.25 to 1.0
September 29, 2012	5.00 to 1.0
December 31, 2012	4.75 to 1.0
March 30, 2013	4.75 to 1.0
June 29, 2013	4.75 to 1.0
September 28, 2013	4.25 to 1.0
December 31, 2013	4.00 to 1.0

<sup>22</sup> Consolidated EBITDA (1) for the fiscal quarter ended on July 3, 2010 shall be deemed to be \$23.676 million, (2) for the fiscal quarter ended on October 2, 2010 shall be deemed to be \$21.313 million, (3) for the fiscal quarter ended on December 31, 2010 shall be deemed to be \$19.770 million and (4) for the fiscal quarter ended on April 2, 2011 shall be deemed to be \$21.288 million.

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March 29, 2014	4.00 to 1.0
June 28, 2014	4.00 to 1.0
September 27, 2014	3.75 to 1.0
December 31, 2014	3.75 to 1.0
April 4, 2015	3.75 to 1.0
July 4, 2015	3.75 to 1.0
October 4, 2015 and the end of each fiscal quarter thereafter	3.75 to 1.0



(B) **Maximum Capital Expenditures**

**Capital Expenditures**

**Covenant Requirement:**<sup>23</sup>

	<b>No more than:</b>
Fiscal year ending December 31, 2011	\$24.0 million
Fiscal year ending December 31, 2012	\$27.0 million
Fiscal year ending December 31, 2013	\$28.0 million
Each fiscal year thereafter	\$30.0 million

<sup>23</sup> If the aggregate amount of Capital Expenditures made in any fiscal year is less than the maximum amount of Capital Expenditures permitted for such fiscal year (before giving effect to any carryover), then the amount of such shortfall may be added to the amount of Capital Expenditures permitted below for the immediately succeeding (but not any other) fiscal year. In determining whether any amount is available for carryover, the amount expended in any fiscal year shall first be deemed to be from the amount allocated to such fiscal year (before giving effect to any carryover).

(C) **Minimum Consolidated EBITDA**

**Consolidated EBITDA** for the Test Period ended [ ],  
201[ ] (calculated in accordance with (A) above)

\_\_\_\_\_

**Covenant Requirement**

No less than \$50 million  
as at the end of the fiscal  
quarter for the Test  
Period then ended

SCHEDULE 2

**Excess Cash Flow Calculation: (a) + (b) - (c)**

- (a) Consolidated EBITDA for Excess Cash Flow Period ended [     ], 201[   ] \_\_\_\_\_
  
- (b) Consolidated Working Capital Adjustment for Excess Cash Flow Period ended [     ], 201[   ] \_\_\_\_\_
  
- (c) (i) scheduled principal payments in respect of Indebtedness of the Borrower or any Subsidiary and the permanent repayment of the principal component of Capitalized Lease Obligations, in each case made with Internally Generated Cash during such Excess Cash Flow Period, *plus* \_\_\_\_\_  
  
(ii) Capital Expenditures and Investments made pursuant to Section 6.04(e) and (h) of the Credit Agreement, in each case made with Internally Generated Cash during such Excess Cash Flow Period, *plus* \_\_\_\_\_  
  
(iii) Consolidated Tax Expense, to the extent paid or payable in cash with respect to such Excess Cash Flow Period, *plus* \_\_\_\_\_  
  
(iv) without duplication of amounts deducted from Excess Cash Flow in prior Excess Cash Flow Periods or such Excess Cash Flow Period, to the extent set forth in a certificate of a Responsible Officer delivered to the Administrative Agent at or before the time the Compliance Certificate for the period ending simultaneously with such Excess Cash Flow Period is required to be delivered pursuant to Section 5.01(d) of the Credit Agreement, the aggregate amount that shall be required to be paid in cash in respect of Capital Expenditures to be made by the Borrower or any Subsidiary during the 90 days following such Excess Cash Flow Period pursuant to binding contracts (the “**Contract Amount**”) entered into prior to or during such Excess Cash Flow Period; *provided* that to the extent the aggregate amount of Internally Generated Cash actually utilized to finance such Capital Expenditures during such 90-day period is less than the Contract Amount, the amount of such shortfall shall be added to Excess Cash Flow for the Excess Cash Flow Period following such Excess Cash Flow Period, *plus* \_\_\_\_\_  
  
(v) the aggregate amount actually paid by Borrower and its Subsidiaries in cash during such Excess Cash Flow Period on account of Consolidated Interest Expense, *plus* \_\_\_\_\_

(vi) the aggregate amount of any cash payments made during such Excess Cash Flow Period in respect of expenses and losses (minus the aggregate amount of any cash received in respect of gains) referred to in clause (f) of the definition of "Consolidated Net Income" included in determining Consolidated Net Income for such Excess Cash Flow Period, *plus*

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(vii) reasonable and customary expenses incurred in connection with the issuance, prepayment, amendment or refinancing of Indebtedness or issuance of Equity Interests or consummation of an Asset Sale permitted hereunder during such Excess Cash Flow Period to the extent paid from Internally Generated Cash, *plus*

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(viii) reasonable fees, costs and expenses paid from Internally Generated Cash that are incurred in connection with the Transactions or any Permitted Acquisition (whether or not consummated) in respect of any employment agreements, change in control, stock based compensation or employee incentive agreement or plan or other employee benefit agreement or plan arising in connection with the Transactions or such Permitted Acquisition or the occurrence of a change in control as defined under such compensation agreement or plan; *provided* that the deduction from Excess Cash Flow shall be limited to (1) in the case of the Transactions, severance payments and payments arising in connection with the change of control of the Acquired Business, in each case to the extent made during the Excess Cash Flow Period ending December 31, 2012 and (2) in each case of Permitted Acquisitions occurring after the Closing Date, \$5.0 million of payments made during the relevant Excess Cash Flow Period.

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**Excess Cash Flow**

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SCHEDULE 3

Report of Accounting Firm

[Form of]  
**INTEREST ELECTION REQUEST**

UBS AG, Stamford Branch,  
 as Administrative Agent  
 677 Washington Boulevard  
 Stamford, Connecticut 06901

Attention: [            ]

[Date]

Re: Ducommun Incorporated

Ladies and Gentlemen:

This Interest Election Request is delivered to you pursuant to Section 2.08 of the Credit Agreement dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among DUCOMMUN INCORPORATED, a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, “**Arrangers**”), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, “**Swingline Lender**”), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, “**Administrative Agent**”) for the Lenders and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, “**Documentation Agent**”), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, “**Syndication Agent**”) and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit.

Borrower hereby requests that on [\_\_\_\_\_] <sup>24</sup> (the “**Interest Election Date**”),

1. \$[\_\_\_\_\_] of the presently outstanding principal amount of the Loans originally made on [\_\_\_\_\_],

<sup>24</sup> Shall be a Business Day that is (a) the date hereof in the case of a conversion into ABR Loans to the extent this Interest Election Request is delivered to the Administrative Agent prior to 2:00 p.m., New York City time on the date hereof, otherwise the Business Day following the date of delivery hereof, and (b) three Business Days following the date hereof in the case of a conversion into/continuation of Eurodollar Loans to the extent this Interest Election Request is delivered to the Administrative Agent prior to 2:00 p.m. New York City time on the date hereof, otherwise the fourth Business Day following the date of delivery hereof, in each case.

2. and all presently being maintained as [ABR Loans] [Eurodollar Loans],
3. be [converted into] [continued as],
4. [Eurodollar Loans having an Interest Period of [one/two/three/six/nine/twelve]<sup>25</sup> months] [ABR Loans].

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the proposed Interest Election Date, both before and after giving effect thereto and to the application of the proceeds therefrom:

- (a) the foregoing [conversion] [continuation] complies with the terms and conditions of the Credit Agreement (including, without limitation, Section 2.08 of the Credit Agreement);
- (b) no Default has occurred and is continuing, or would result from such proposed [conversion] [continuation].

[Signature Page Follows]

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<sup>25</sup> Interest periods of nine or twelve months are only permissible with the consent of all affected Lenders.

Borrower has caused this Interest Election Request to be executed and delivered by its duly authorized officer as of the date first written above.

DUCOMMUN INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:



[Form of]  
**JOINDER AGREEMENT**

Reference is made to the Credit Agreement, dated as of June 28, 2011 (the “**Credit Agreement**”) among DUCOMMUN INCORPORATED, a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given to it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, “**Arrangers**”), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, “**Swingline Lender**”), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, “**Administrative Agent**”) for the Lenders and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, “**Documentation Agent**”), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, “**Syndication Agent**”) and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit.

WITNESSETH:

WHEREAS, the Guarantors have entered into the Credit Agreement and the Security Agreement in order to induce the Lenders to make the Loans and the Issuing Bank to issue Letters of Credit to or for the benefit of Borrower;

WHEREAS, pursuant to Section 5.11(b) of the Credit Agreement, each Wholly-Owned Domestic Subsidiary (except for any Immaterial Subsidiary) that was not in existence on the date of the Credit Agreement is required to become a Guarantor under the Credit Agreement by executing a Joinder Agreement. The undersigned Subsidiary (the “**New Guarantor**”) is executing this joinder agreement (“**Joinder Agreement**”) to the Credit Agreement in order to induce the Lenders to make additional Revolving Loans and the Issuing Bank to issue Letters of Credit and as consideration for the Loans previously made and Letters of Credit previously issued.

NOW, THEREFORE, the Administrative Agent, Collateral Agent and the New Guarantor hereby agree as follows:

1. **Guarantee.** In accordance with Section 5.11(b) of the Credit Agreement, the New Guarantor by its signature below becomes a Guarantor under the Credit Agreement with the same force and effect as if originally named therein as a Guarantor.

2. **Representations and Warranties.** The New Guarantor hereby (a) agrees to all the terms and provisions of the Credit Agreement applicable to it as a Guarantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Guarantor thereunder are true and correct in all material respects (except that any representation and warranty that is qualified as to “materiality” or “Material Adverse Effect” shall be true and correct in all respects) on and as of the date hereof. Each reference to a Guarantor in the Credit Agreement shall be deemed to include the New Guarantor. The New Guarantor hereby attaches supplements to the schedules to the Credit Agreement applicable to it to the extent relevant.

3. **Severability.** Any provision of this Joinder Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

4. **Counterparts.** This Joinder Agreement may be executed in counterparts, each of which shall constitute an original. Delivery of an executed signature page to this Joinder Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Joinder Agreement.

5. **No Waiver.** Except as expressly supplemented hereby, the Credit Agreement shall remain in full force and effect.

6. **Notices.** All notices, requests and demands to or upon the New Guarantor, any Agent or any Lender shall be governed by the terms of Section 10.01 of the Credit Agreement.

7. **Governing Law.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have caused this Joinder Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

[NEW GUARANTOR]

By: \_\_\_\_\_  
Name:  
Title:

Address for Notices:

UBS AG, STAMFORD BRANCH,  
as Administrative Agent and Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

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[Note: Schedules to be attached.]

[Form of]  
LANDLORD ACCESS AGREEMENT

**RECORDING REQUESTED BY:**

Latham & Watkins LLP

**AND WHEN RECORDED MAIL TO:**

Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022-4802  
Attn: Tamara Katz, Esq.

**Re: [NAME OF MORTGAGOR]**

Location: [PROPERTY]

Municipality:

County:

State:

Space above this line for recorder's use only

**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS  
AND LEASES AND FIXTURE FILING**

This **MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING**, dated as of \_\_\_\_\_, 20\_\_ (as it may be amended, supplemented or otherwise modified from time to time, this "Mortgage"), by and from **[NAME OF MORTGAGOR]**, a \_\_\_\_\_, with an address at \_\_\_\_\_ ("Mortgagor") to **UBS AG, STAMFORD BRANCH**, with an address at 677 Washington Boulevard, 6<sup>th</sup> Floor, Stamford, Connecticut 06901 as Collateral Agent for the benefit of the Secured Parties (in such capacity, together with its successors and assigns, "Mortgagee").

**RECITALS:**

**WHEREAS**, reference is made to that certain Credit Agreement, dated as of the date hereof (as it may be amended, amended and restated, restated, replaced, supplemented or otherwise modified, the "Credit Agreement"), entered into by and among DUCOMMUN INCORPORATED, a Delaware corporation ("Borrower"), the Subsidiary Guarantors (as defined therein), the Lenders (as defined therein), UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers, UBS LOAN FINANCE LLC, as swingline lender, UBS AG, STAMFORD BRANCH, as an issuing bank, as administrative agent for the Lenders and as collateral agent (in such capacity, "Collateral Agent") for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent, CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent, and BANK OF AMERICA, N.A., as an issuing bank.

**WHEREAS**, either (a) Mortgagor is Borrower or (b) Mortgagor is the wholly owned subsidiary of Borrower or (c) Borrower directly or indirectly owns a controlling interest in Mortgagor or (d) Borrower is the sole member or a member of Mortgagor or (e) Borrower is the general or managing partner of Mortgagor, as a result of any of which Mortgagor is a direct or indirect beneficiary of the Loans and other accommodations of Lenders and Lender Counterparties as set forth in the Credit Agreement and may receive advances therefrom, whether or not Mortgagor is a party to the Credit Agreement;

**WHEREAS**, in consideration of the making of the Loan and other accommodations of Lenders as set forth in the Credit Agreement, Mortgagor has agreed, subject to the terms and conditions hereof, each other Loan Document (as defined in the Credit Agreement), to secure Mortgagor's obligations under the Loan Documents as set forth herein; and

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, Mortgagee and Mortgagor agree as follows:

## **SECTION 1. DEFINITIONS**

**1.1 Definitions.** Capitalized terms used herein (including the recitals hereto) not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. In addition, as used herein, the following terms shall have the following meanings:

**"Indebtedness"** shall have the meaning ascribed to it in the Credit Agreement.

**"Mortgaged Property"** means all of Mortgagor's interest in (i) the real property described in Exhibit A, together with any greater or additional estate therein as hereafter may be acquired by Mortgagor (the "Land"); (ii) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon the Land subject to the Permitted Liens, (the "Improvements"; the Land and Improvements are collectively referred to as the "Premises"); (iii) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures"); (iv) all right, title and interest of Mortgagor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC (defined below), now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (the "Personalty"); (v) all reserves, escrows or impounds required under the Credit Agreement and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property (the "Deposit Accounts"); (vi) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person

(other than Mortgagor) a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits subject to depositors rights and requirements of law (the "Leases"); (vii) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits subject to depositors rights and requirements of law, and other benefits paid or payable by parties to the Leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the "Rents"), (viii) to the extent mortgageable or assignable all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the "Property Agreements"); (ix) to the extent mortgageable or assignable all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing; (x) all property tax refunds payable to Mortgagor (the "Tax Refunds"); (xi) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the "Proceeds"); (xii) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the "Insurance"); and (xiii) all of Mortgagor's right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty (the "Condemnation Awards"). As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

"**Obligations**" means all of the agreements, covenants, conditions, warranties, representations and other obligations of Mortgagor (including, without limitation, the obligation to repay the Indebtedness) under the Credit Agreement, any other Loan Documents.

"**UCC**" means the Uniform Commercial Code of New York or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than New York, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

**1.2 Interpretation.** References to "Sections" shall be to Sections of this Mortgage unless otherwise specifically provided. Section headings in this Mortgage are included herein for convenience of reference only and shall not constitute a part of this Mortgage for any other purpose or be given any substantive effect. The rules of construction set forth in the Credit Agreement shall be applicable to this Mortgage mutatis mutandis. If any conflict or inconsistency exists between this Mortgage and the Credit Agreement, the Credit Agreement shall govern.

## **SECTION 2. GRANT**

To secure the full and timely payment of the Indebtedness and the full performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS WITH POWER OF SALE (if available under State law), to Mortgagee the

Mortgaged Property, subject, however, to the Permitted Liens, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee for so long as any of the Obligations remain outstanding, upon the trust, terms and conditions contained herein.

### SECTION 3. WARRANTIES, REPRESENTATIONS AND COVENANTS

**3.1 Title.** Mortgagor represents and warrants to Mortgagee that except for the Permitted Liens, (a) Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, and (b) this Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property.

**3.2 First Lien Status.** Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents to the extent related to the Mortgaged Property. If any lien or security interest other than a Permitted Lien is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released.

**3.3 Payment and Performance.** Mortgagor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed as required under the Loan Documents.

**3.4 Replacement of Fixtures and Personalty.** Except as otherwise permitted in the Credit Agreement, Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be permitted under the Credit Agreement or first approved in writing by Mortgagee.

**3.5 Inspection.** Mortgagor shall permit Mortgagee, and Mortgagee's agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and all books and records of Mortgagor located thereon, and to conduct such environmental and engineering studies as Mortgagee may reasonably require; provided, such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property and subject to any restrictions as set forth in Schedule A hereto.

**3.6 Covenants Running with the Land.** All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged



Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee. In addition, all of the covenants of Mortgagor in any Loan Document party thereto are incorporated herein by reference and, together with covenants in this Section, shall be covenants running with the land.

**3.7 Condemnation Awards and Insurance Proceeds.** Except as otherwise stated in the Credit Agreement, Mortgagor assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Credit Agreement. Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property, subject to the terms of the Credit Agreement. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly, subject to the terms of the Credit Agreement.

**3.8 Change in Tax Law.** Upon the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (i) deducting or allowing Mortgagor to deduct from the value of the Mortgaged Property for the purpose of taxation any lien or security interest thereon or (ii) subjecting Mortgagee or any of the Lenders to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Mortgage, the Obligations or Mortgagee, and the result is to increase the taxes imposed upon or the cost to Mortgagee of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder, then, and in any such event, Mortgagor shall, on demand, pay to Mortgagee and the Lenders additional amounts to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful, or taxable to Mortgagee, or would constitute usury or render the Indebtedness wholly or partially usurious under applicable law, then Mortgagor shall pay or reimburse Mortgagee or the Lenders for payment of the lawful and non-usurious portion thereof.

**3.9 Mortgage Tax.** Except as otherwise stated in the Credit Agreement, Mortgagor shall (i) pay when due any tax imposed upon it or upon Mortgagee or any Lender or Lender Counterparty pursuant to the tax law of the state in which the Mortgaged Property is located in connection with the execution, delivery and recordation of this Mortgage and any of the other Loan Documents, and (ii) prepare, execute and file any form required to be prepared, executed and filed in connection therewith.

**3.10 Reduction Of Secured Amount.** In the event that the amount secured by the Mortgage is less than the Indebtedness, then the amount secured shall be reduced only by the last and final sums that Borrower repays with respect to the Indebtedness and shall not be reduced by any intervening repayments of the Indebtedness unless arising from the Mortgaged Property. So long as the balance of the Indebtedness exceeds the amount secured, any payments of the Indebtedness shall not be deemed to be applied against, or to reduce, the portion of the Indebtedness secured by this Mortgage. Such payments shall instead be deemed to reduce only such portions of the Indebtedness as are secured by other collateral located outside of the state in which the Mortgaged Property is located or as are unsecured.

**3.11 Prohibited Transfers.** Except as expressly permitted by the Credit Agreement, Mortgagor shall not, without the prior written consent of Mortgagee, sell, lease or convey all or any part of the Mortgaged Property.

#### **SECTION 4. DEFAULT AND FORECLOSURE**

**4.1 Remedies.** If an Event of Default has occurred and is continuing beyond any applicable notice, cure or grace period, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses: (a) declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable; (b) enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor; (c) hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions hereof; (d) institute proceedings for the complete foreclosure of this Mortgage, either by judicial action or by power of sale, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee or any of the Lenders may be a purchaser at such sale and if Mortgagee is the highest bidder, Mortgagee shall credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash. In the event this Mortgage is foreclosed by judicial action, appraisal of the Mortgaged Property is waived; (e) make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions hereof; and/or (f) exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity.

**4.2 Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**4.3 Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee or the Lenders, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee or the Lenders in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

**4.4 Release of and Resort to Collateral.** Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

**4.5 Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any Event of Default or of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents; and (c) any right to a marshalling of assets or a sale in inverse order of alienation. Borrower waives the statutory right of redemption and equity of redemption.

**4.6 Discontinuance of Proceedings.** If Mortgagee or the Lenders shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee or the Lenders shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee or the Lenders shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee or the Lenders shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee or the Lenders thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**4.7 Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in accordance with the terms of the Credit Agreement.

**4.8 Occupancy After Foreclosure.** Any sale of the Mortgaged Property or any part thereof will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**4.9 Additional Advances and Disbursements; Costs of Enforcement.** If any Event of Default exists, Mortgagee and each of the Lenders shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor in accordance with the Credit Agreement. All sums advanced and expenses incurred at any time by Mortgagee or any Lender under this Section, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred if not repaid within five (5) days after demand therefor, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Indebtedness, and all such sums, together with interest thereon, shall be secured by this Mortgage. Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee or the Lenders in respect thereof, by litigation or otherwise.

**4.10 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Section, the assignment of the Rents and Leases under Section 5, the security interests under Section 6, nor any other remedies afforded to Mortgagee or the Lenders under the Loan Documents, at law or in equity shall cause Mortgagee or any Lender to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee or any Lender to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

## **SECTION 5. ASSIGNMENT OF RENTS AND LEASES**

**5.1 Assignment.** In furtherance of and in addition to the assignment made by Mortgagor herein, Mortgagor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Mortgagee all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of

Default shall have occurred and be continuing, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice by Mortgagee (any such notice being hereby expressly waived by Mortgagor).

**5.2 Perfection Upon Recordation.** Mortgagor acknowledges that Mortgagee has taken all reasonable actions necessary to obtain, and that upon recordation of this Mortgage Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases subject to the Permitted Liens and in the case of security deposits, rights of depositors and requirements of law. Mortgagor acknowledges and agrees that upon recordation of this Mortgage Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "Bankruptcy Code"), without the necessity of commencing a foreclosure action with respect to this Mortgage, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

**5.3 Bankruptcy Provisions.** Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents, and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

## **SECTION 6. SECURITY AGREEMENT**

**6.1 Security Interest.** This Mortgage constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations subject to the Permitted Liens, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

**6.2 Financing Statements.** Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor's chief executive office is at the address set forth on Appendix B to the Credit Agreement.

**6.3 Fixture Filing.** This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

#### **SECTION 7. ATTORNEY-IN-FACT**

Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Fixtures, Personalty, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; provided, (i) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (ii) any sums advanced by Mortgagee in such performance shall be added to and included in the definition of Indebtedness and shall bear interest at the rate or rates at which interest is then computed on the Indebtedness provided that from the date incurred said advance is not repaid within five (5) days demand therefor; (iii) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (iv) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

## **SECTION 8. MORTGAGEE AS AGENT**

Mortgagee has been appointed to act as Mortgagee hereunder by Lenders and, by their acceptance of the benefits hereof, Lender Counterparties. Mortgagee shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including the release or substitution of Mortgaged Property), solely in accordance with this Mortgage and the Credit Agreement; provided, Mortgagee shall exercise, or refrain from exercising, any remedies provided for herein in accordance with the instructions of Required Lenders. In furtherance of the foregoing provisions of this Section, each Lender Counterparty, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Mortgaged Property, it being understood and agreed by such Lender Counterparty that all rights and remedies hereunder may be exercised solely by Mortgagee for the benefit of Lenders and Lender Counterparties in accordance with the terms of this Section. Mortgagee shall at all times be the same Person that is Administrative Agent under the Credit Agreement. Written notice of resignation by Administrative Agent pursuant to terms of the Credit Agreement shall also constitute notice of resignation as Mortgagee under this Mortgage; removal of Administrative Agent pursuant to the terms of the Credit Agreement shall also constitute removal as Mortgagee under this Mortgage; and appointment of a successor Administrative Agent pursuant to the terms of the Credit Agreement shall also constitute appointment of a successor Mortgagee under this Mortgage. Upon the acceptance of any appointment as Administrative Agent under the terms of the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Mortgagee under this Mortgage, and the retiring or removed Mortgagee under this Mortgage shall promptly (i) transfer to such successor Mortgagee all sums, securities and other items of Mortgaged Property held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Mortgagee under this Mortgage, and (ii) execute and deliver to such successor Mortgagee such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Mortgagee of the security interests created hereunder, whereupon such retiring or removed Mortgagee shall be discharged from its duties and obligations under this Mortgage thereafter accruing. After any retiring or removed Administrative Agent's resignation or removal hereunder as Mortgagee, the provisions of this Mortgage shall continue to enure to its benefit as to any actions taken or omitted to be taken by it under this Mortgage while it was Mortgagee hereunder.

## **SECTION 9. TERMINATION AND RELEASE.**

Upon payment and performance in full of the Obligations, subject to and in accordance with the terms and provisions of the Credit Agreement, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor.

## **SECTION 10. LOCAL LAW PROVISIONS**

[to be provided, if any, by local counsel or title company]

## **SECTION 11. MULTI-SITE REAL ESTATE TRANSACTIONS.**

Mortgagor acknowledges that this Mortgage is one of a number of Mortgages and other security documents (“Other Mortgages”) that secure the Obligations. Mortgagor agrees that, subject to the terms of Section 9 hereof, the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by Mortgagee of any security for or guarantees of the Obligations, or by any failure, neglect or omission on the part of Mortgagee to realize upon or protect any Obligation or any collateral security therefor including the Other Mortgages. Subject to the terms of Section 9 hereof, the lien of this Mortgage shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Obligations or of any of the collateral security therefor, including the Other Mortgages or any guarantee thereof, and, to the fullest extent permitted by applicable law, Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Mortgages without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Mortgagee’s rights and remedies under any or all of the Other Mortgages shall not in any manner impair the indebtedness hereby secured or the lien of this Mortgage and any exercise of the rights and remedies of Mortgagee hereunder shall not impair the lien of any of the Other Mortgages or any of Mortgagee’s rights and remedies thereunder. To the fullest extent permitted by applicable law, Mortgagor specifically consents and agrees that Mortgagee may exercise its rights and remedies hereunder and under the Other Mortgages separately or concurrently and in any order that it may deem appropriate and waives any right of subrogation.

## **SECTION 12. MISCELLANEOUS**

**12.1 Notices.** Any notice and other communication required or permitted to be given under this Mortgage shall be given in accordance with the notice provisions of the Credit Agreement to the address set forth therein.

**12.2 Governing Law.** THE PROVISIONS OF THIS MORTGAGE REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS MORTGAGE AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR AND MORTGAGEE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

**12.3 Severability.** In case any provision in or obligation under this Mortgage shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.



**12.4 Credit Agreement.** In the event of any conflict or inconsistency with the terms of this Mortgage and the terms of the Credit Agreement, the Credit Agreement shall control.

**12.5 Time of Essence.** Time is of the essence of this Mortgage.

**12.6 WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 12.6 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**12.7 Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

**12.8 No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions. No failure or delay on the part of Mortgagee or any Lender in the exercise of any power, right or privilege hereunder or under any other Loan

Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Mortgage and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**12.9 Subrogation.** To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

**12.10 Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

**12.11 Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**12.12 Counterparts.** This Mortgage is being executed in several counterparts, all of which are identical, except that to facilitate recordation, if the Mortgaged Property is situated offshore or in more than one county, descriptions of only those portions of the Mortgaged Property located in the county in which a particular counterpart is recorded shall be attached as Exhibit A thereto. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, Mortgagor has on the date set forth in the acknowledgment hereto, effective as of the date first above written, caused this instrument to be duly executed and delivered by authority duly given.

[NAME OF MORTGAGOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

---

[APPROPRIATE NOTARY BLOCK TO BE PROVIDED BY LOCAL COUNSEL]

EXHIBIT A TO  
MORTGAGE

Legal Description of Premises: *[See attached]*

[Form of]  
**LC REQUEST [AMENDMENT]**

Dated <sup>(26)</sup>

UBS AG, Stamford Branch, as Administrative Agent under the Credit Agreement (as amended, modified or supplemented from time to time, the “**Credit Agreement**”), dated as of June 28, 2011, among Ducommun Incorporated, the Lenders from time to time party thereto, UBS Securities LLC and Credit Suisse Securities (USA) LLC, as Joint Lead Arrangers, UBS Loan Finance LLC, as Swingline Lender, UBS AG, Stamford Branch, as an Issuing Bank, Administrative Agent and Collateral Agent, Wells Fargo Bank, National Association, as Documentation Agent, Credit Suisse Securities (USA) LLC, as Syndication Agent, and Bank of America, N.A., as an Issuing Bank.

677 Washington Boulevard  
 Stamford, Connecticut 06901  
 Attention: [            ]

[Name and Address of Issuing Bank  
 if different from Administrative Agent]

Ladies and Gentlemen:

We hereby request that [name of proposed Issuing Bank], as Issuing Bank under the Credit Agreement, [issue] [amend] [renew] [extend] [a] [an existing] [Standby] [Commercial] Letter of Credit for the account of the undersigned<sup>(27)</sup> on <sup>(28)</sup> (the “Date of [Issuance] [Amendment] [Renewal] [Extension]”) in the aggregate stated amount of <sup>(29)</sup>. [Such Letter of Credit was originally issued on [date].] The requested Letter of Credit [shall be] [is] denominated in Dollars.

For purposes of this LC Request, unless otherwise defined herein, all capitalized terms used herein which are defined in the Credit Agreement shall have the respective meaning provided therein.

<sup>26</sup> Date of LC Request.

<sup>27</sup> Note that if the LC Request is for the account of a Subsidiary, Borrower shall be a co-applicant, and be jointly and severally liable, with respect to each Letter of Credit issued for the account or in favor of any Subsidiary.

<sup>28</sup> Date of Issuance [Amendment] [Renewal] [Extension] which shall be at least five Business Days after the date of this LC Request, if this LC Request is delivered to the Issuing Bank by 11:00 a.m., New York City time (or such shorter period as is acceptable to the Issuing Bank).

<sup>29</sup> Aggregate initial stated amount of Letter of Credit.

The beneficiary of the requested Letter of Credit [will be] [is] <sup>(30)</sup>, and such Letter of Credit [will be] [is] in support of <sup>(31)</sup> and [will have] [has] a stated expiration date of <sup>(32)</sup>. [Describe the nature of the amendment, renewal or extension.]

We hereby certify that:

(1) The conditions to the [issuance][amendment][renewal][extension] of the Letter of Credit requested herein specified in Sections [4.02(b), (c), (d) and (e)]<sup>33</sup> of the Credit Agreement are satisfied as of the date hereof.

(2) After giving effect to the request herein, the LC Exposure will not exceed the LC Commitment and the total Revolving Exposures will not exceed the total Revolving Commitments.

Copies of all relevant documentation with respect to the supported transaction are attached hereto.

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Name:  
Title:

<sup>30</sup> Insert name and address of beneficiary.

<sup>31</sup> Insert description of the obligation to which it relates in the case of Standby Letters of Credit and a description of the commercial transaction which is being supported in the case of Commercial Letters of Credit.

<sup>32</sup> Insert last date upon which drafts may be presented which may not be later than (x) the date which is one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (y) the Letter of Credit Expiration Date, in each case subject to the auto-renewal provisions set forth in Section 2.18(c)(ii) of the Credit Agreement to the extent such Letter of Credit is an Auto-Renewal Letter of Credit.

<sup>33</sup> Modify to include only Section 4.02(c) solely in respect of issuances to be made on the Closing Date.

[Form of]  
**LENDER ADDENDUM**

Reference is made to the Credit Agreement dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among DUCOMMUN INCORPORATED, a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, “**Arrangers**”), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, “**Swingline Lender**”), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, “**Administrative Agent**”) for the Lenders and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, “**Documentation Agent**”), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, “**Syndication Agent**”) and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit.

Upon execution and delivery of this Lender Addendum by the parties hereto as provided in Section 10.15 of the Credit Agreement, the undersigned hereby becomes a Lender thereunder having the Commitment set forth in Schedule 1 hereto, effective as of the Closing Date.

THIS LENDER ADDENDUM SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

This Lender Addendum may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page hereof by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.



IN WITNESS WHEREOF, the parties hereto have caused this Lender Addendum to be duly executed and delivered by their proper and duly authorized officers as of this \_\_ day of [ ], 201[ ].

\_\_\_\_\_  
as a Lender  
[Please type legal name of Lender above]

By: \_\_\_\_\_  
Name:  
Title:

[If second signature is necessary:]

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed:

DUCOMMUN INCORPORATED

By: \_\_\_\_\_

Name:

Title:

UBS AG, STAMFORD BRANCH,  
as Administrative Agent

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**COMMITMENTS AND NOTICE ADDRESS**

- 1. **Name of Lender:** \_\_\_\_\_  
**Notice Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Attention:** \_\_\_\_\_  
**Telephone:** \_\_\_\_\_  
**Facsimile:** \_\_\_\_\_
- 2. **Commitment:** \_\_\_\_\_

[Form of]  
**MORTGAGE**

**WHEN EXECUTED MAIL TO:**

Latham & Watkins LLP  
 885 Third Avenue  
 New York, New York 10022  
 Attn: Tamara Katz

Re: [TENANT NAME]

**LANDLORD WAIVER AND CONSENT AGREEMENT**

This **LANDLORD WAIVER AND CONSENT AGREEMENT** (this “**Agreement**”), dated as of [\_\_\_\_\_, \_\_\_\_], is entered into by [NAME OF LANDLORD] (“**Landlord**”), for the benefit of Agent (as defined below).

**RECITALS:**

**WHEREAS**, [NAME OF GRANTOR], a [TYPE OF PERSON] (“**Tenant**”), has possession of and occupies all or a portion of the property described on Exhibit A annexed hereto (the “**Premises**”);

**WHEREAS**, Tenant’s interest in the Premises arises under the [lease agreement] (the “**Lease**”) more particularly described on Exhibit B annexed hereto, pursuant to which Landlord has rights, upon the terms and conditions set forth therein, to take possession of, and otherwise assert control over, the Premises;

**WHEREAS**, reference is made to that certain Credit Agreement, dated as of June 28, 2011 (as it may be amended, supplemented, restated or otherwise modified, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among DUCOMMUN INCORPORATED, a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors, the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers, UBS LOAN FINANCE LLC, as swingline lender, UBS AG, STAMFORD BRANCH, as an issuing bank, as administrative agent for the Lenders and as collateral agent (in such capacity, “**Agent**”) for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent, CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent, and BANK OF AMERICA, N.A., as an issuing bank;

**WHEREAS**, Borrower’s repayment of the extensions of credit made by Lenders under the Credit Agreement and the loans made by Lenders thereunder will be secured, in part, by all inventory of Borrower (including all inventory of Borrower now or hereafter located on the Premises (the “**Subject Inventory**”)) and all equipment used in Borrower’s business (including all equipment of Borrower now or hereafter located on the Premises (the “**Subject Equipment**”; and, together with the Subject Inventory, the “**Collateral**”)); and

**WHEREAS**, Agent has requested that Landlord execute this Agreement as a condition to the extension of credit to Tenant under the Credit Agreement.

**NOW, THEREFORE**, in consideration of the Premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby represents and warrants to, and covenants and agrees with, Agent as follows:

1. Landlord hereby (a) waives and releases unto Agent and its successors and assigns any and all rights granted by or under any present or future laws to levy or distraint for rent or any other charges which may be due to Landlord against the Collateral, and any and all other claims, liens and demands of every kind which it now has or may hereafter have against the Collateral, and (b) agrees that any rights it may have in or to the Collateral, no matter how arising (to the extent not effectively waived pursuant to clause (a) of this paragraph 2), shall be subordinate to the rights of Agent in respect thereof. Landlord acknowledges that the Collateral is and will remain personal property and not fixtures even though it may be affixed to or placed on the Premises.

2. Landlord certifies that (a) Landlord is the landlord under the Lease, (b) the Lease is in full force and effect and has not been amended, modified, or supplemented except as set forth on Exhibit B annexed hereto, (c) to the knowledge of Landlord, there is no defense, offset, claim or counterclaim by or in favor of Landlord against Tenant under the Lease or against the obligations of Landlord under the Lease, (d) no notice of default has been given under or in connection with the Lease which has not been cured, and Landlord has no knowledge of the occurrence of any other default under or in connection with the Lease, and (e) except as disclosed to Agent on Schedule 1 attached hereto and made a part hereof, no portion of the Premises is encumbered in any way by any deed of trust or mortgage lien or ground or superior lease.

3. Landlord consents to the installation or placement of the Collateral on the Premises, and Landlord grants to Agent a license to enter upon and into the Premises to do any or all of the following with respect to the Collateral: assemble, have appraised, display, remove, maintain, prepare for sale or lease, repair, transfer, or sell (at public or private sale). Any entry upon or into the Premises, shall be subject to an indemnity from the lenders under the Credit Agreement reasonably satisfactory to Landlord pursuant to which such lenders and holders agree to indemnify, defend and hold Landlord harmless from and against any and all claims, judgments, liabilities, costs and expenses incurred by Landlord caused solely by Agent entering upon or into the Premises and taking any of the foregoing actions with respect to the Collateral. Such costs shall include any damage to the Premises made by Agent in severing and/or removing the Collateral therefrom.

4. Landlord agrees that it will not prevent Agent or their designees from entering upon the Premises at all reasonable times to inspect or remove the Collateral. In the event that Landlord has the right to, and desires to, obtain possession of the Premises (either through expiration of the Lease or termination thereof due to the default of Tenant thereunder), Landlord will deliver notice (the "Landlord's Notice") to Agent to that effect. Within the 120 day period after Agent receives the Landlord's Notice, Agent shall have the right, but not the obligation, to cause the Collateral to be removed from the Premises. During such 120 day period, Landlord will not remove the Collateral from the Premises nor interfere with Agent's actions in removing the Collateral from the Premises or Agent's actions in otherwise enforcing their security interest in the Collateral. Notwithstanding anything to the contrary in this paragraph, Agent shall at no time have any obligation to remove the Collateral from the Premises.

5. Landlord shall send to Agent a copy of any notice of default under the Lease sent by Landlord to Tenant. In addition, Landlord shall send to Agent a copy of any notice received by Landlord of a breach or default under any other lease, mortgage, deed of trust, security agreement or other instrument to which Landlord is a party which may affect Landlord's rights in, or possession of, the Premises.

6. All notices to Agent under this Agreement shall be in writing and sent to Agent at its address set forth on the signature page hereof by telefacsimile, by United States mail, or by overnight delivery service.

7. The provisions of this Agreement shall continue in effect until Landlord shall have received Agent's written certification that all amounts advanced under the Credit Agreement have been paid in full.

8. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and shall be construed and enforced in accordance with, the internal laws of the State of New York, without regard to conflicts of laws principles.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed and delivered as of the day and year first set forth above.

[NAME OF LANDLORD]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention:

Telecopier:

By its acceptance hereof, as of the day and year first set forth above, Agent agrees to be bound by the provisions hereof.

STATE OF \_\_\_\_\_)

) ss.:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

State of \_\_\_\_\_

My Commission Expires:

STATE OF \_\_\_\_\_)

) ss.:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

State of \_\_\_\_\_

My Commission Expires:



Legal Description of Premises:

Description of Lease:

Landlord Mortgages

[Form of]  
**TERM NOTE**

\$ \_\_\_\_\_

New York, New York  
 [Date]

FOR VALUE RECEIVED, the undersigned, DUCOMMUN INCORPORATED, a Delaware corporation (“**Borrower**”), hereby promises to pay to the order of [UBS AG, STAMFORD BRANCH] (the “**Lender**”) on the Term Loan Maturity Date (as defined in the Credit Agreement referred to below) in lawful money of the United States and in immediately available funds, the principal amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or, if less, the aggregate unpaid principal amount of all Term Loans of the Lender outstanding under the Credit Agreement referred to below, which sum shall be due and payable in such amounts and on such dates as are set forth in the Credit Agreement. Borrower further agrees to pay interest in like money at such office specified in Section 2.14 of the Credit Agreement on the unpaid principal amount hereof from time to time from the date hereof at the rates, and on the dates, specified in Section 2.06 of such Credit Agreement.

The holder of this Note may endorse and attach a schedule to reflect the date, Type and amount of each Term Loan of the Lender outstanding under the Credit Agreement, the date and amount of each payment or prepayment of principal hereof, and the date of each interest rate conversion or continuation pursuant to Section 2.08 of the Credit Agreement and the principal amount subject thereto; *provided* that the failure of the Lender to make any such recordation (or any error in such recordation) shall not affect the obligations of Borrower hereunder or under the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among Borrower, the Subsidiary Guarantors, the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers, UBS LOAN FINANCE LLC, as swingline lender, UBS AG, STAMFORD BRANCH, as an issuing bank, as administrative agent for the Lenders and as collateral agent for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent, CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent, and BANK OF AMERICA, N.A., as an issuing bank, is subject to the provisions thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein. Terms used herein which are defined in the Credit Agreement shall have such defined meanings unless otherwise defined herein or unless the context otherwise requires.

This Note is secured and guaranteed as provided in the Credit Agreement and the Security Documents. Reference is hereby made to the Credit Agreement and the Security Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and guarantees, the terms and conditions upon which the security interest and each guarantee was granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided therein.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

**THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE CREDIT AGREEMENT. TRANSFERS OF THIS NOTE MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF THE CREDIT AGREEMENT.**

**THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.**

[Signature Page Follows]

K-1-3

DUCOMMUN INCORPORATED,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

K-1-3

[Form of]  
**REVOLVING NOTE**

\$ \_\_\_\_\_

New York, New York  
 [Date]

FOR VALUE RECEIVED, the undersigned, DUCOMMUN INCORPORATED, a Delaware corporation (“**Borrower**”), hereby promises to pay to the order of [UBS AG, STAMFORD BRANCH] (the “**Lender**”) on the Revolving Maturity Date (as defined in the Credit Agreement referred to below), in lawful money of the United States and in immediately available funds, the principal amount of the lesser of (a) \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) and (b) the aggregate unpaid principal amount of all Revolving Loans of the Lender outstanding under the Credit Agreement referred to below. Borrower further agrees to pay interest in like money at such office specified in Section 2.14 of the Credit Agreement on the unpaid principal amount hereof from time to time from the date hereof at the rates, and on the dates, specified in Section 2.06 of such Credit Agreement.

The holder of this Note may endorse and attach a schedule to reflect the date, Type and amount of each Revolving Loan of the Lender outstanding under the Credit Agreement, the date and amount of each payment or prepayment of principal hereof, and the date of each interest rate conversion or continuation pursuant to Section 2.08 of the Credit Agreement and the principal amount subject thereto; *provided* that the failure of the Lender to make any such recordation (or any error in such recordation) shall not affect the obligations of Borrower hereunder or under the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among Borrower, the Subsidiary Guarantors, the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers, UBS LOAN FINANCE LLC, as swingline lender, UBS AG, STAMFORD BRANCH, as an issuing bank, as administrative agent for the Lenders and as collateral agent for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent, CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent, and BANK OF AMERICA, N.A., as an issuing bank, is subject to the provisions thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein. Terms used herein which are defined in the Credit Agreement shall have such defined meanings unless otherwise defined herein or unless the context otherwise requires.

This Note is secured and guaranteed as provided in the Credit Agreement and the Security Documents. Reference is hereby made to the Credit Agreement and the Security Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and guarantees, the terms and conditions upon which the security interest and each guarantee was granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided therein.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

**THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE CREDIT AGREEMENT. TRANSFERS OF THIS NOTE MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF THE CREDIT AGREEMENT.**

**THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.**

[Signature Page Follows]

K-2-3



DUCOMMUN INCORPORATED,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

K-2-3

[Form of]  
SWINGLINE NOTE

\$ \_\_\_\_\_

New York, New York  
[Date]

FOR VALUE RECEIVED, the undersigned, DUCOMMUN INCORPORATED, a Delaware corporation ("**Borrower**"), hereby promises to pay to the order of [UBS AG, STAMFORD BRANCH] (the "**Lender**") on the Revolving Maturity Date (as defined in the Credit Agreement referred to below), in lawful money of the United States and in immediately available funds, the principal amount of the lesser of (a) \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) and (b) the aggregate unpaid principal amount of all Swingline Loans made by Lender to the undersigned pursuant to Section 2.17 of the Credit Agreement referred to below. Borrower further agrees to pay interest on the unpaid principal amount hereof in like money at such office specified in the Credit Agreement from time to time from the date hereof at the rates and on the dates specified in Section 2.06 of the Credit Agreement.

The holder of this Note may endorse and attach a schedule to reflect the date, the amount of each Swingline Loan and the date and amount of each payment or prepayment of principal thereof; *provided* that the failure of Lender to make such recordation (or any error in such recordation) shall not affect the obligations of Borrower hereunder or under the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement, dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Borrower, the Subsidiary Guarantors, the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers, UBS LOAN FINANCE LLC, as swingline lender, UBS AG, STAMFORD BRANCH, as an issuing bank, as administrative agent for the Lenders and as collateral agent for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent, CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent, and BANK OF AMERICA, N.A., as an issuing bank, is subject to the provisions thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein. Terms used herein which are defined in the Credit Agreement shall have such defined meanings unless otherwise defined herein or unless the context otherwise requires.

This Note is secured and guaranteed as provided in the Credit Agreement and the Security Documents. Reference is hereby made to the Credit Agreement and the Security Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security and guarantees, the terms and conditions upon which the security interest and each guarantee was granted and the rights of the holder of this Note in respect thereof.

Upon the occurrence of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note may become, or may be declared to be, immediately due and payable as provided in the Credit Agreement.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

**THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE CREDIT AGREEMENT. TRANSFERS OF THIS NOTE MUST BE RECORDED IN THE REGISTER MAINTAINED BY THE ADMINISTRATIVE AGENT PURSUANT TO THE TERMS OF THE CREDIT AGREEMENT.**

**THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.**

[Signature Page Follows]

K-3-3

DUCOMMUN INCORPORATED,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

K-3-3

[Form of]  
**PERFECTION CERTIFICATE**

\_\_\_\_\_, 2011

Reference is hereby made to (i) that certain Security Agreement dated as of June 28, 2011 (the "Security Agreement"), between Ducommun Incorporated, a Delaware corporation ("Borrower"), the Guarantors party thereto (collectively, the "Guarantors") and the Collateral Agent (as hereinafter defined) and (ii) that certain Credit Agreement dated as of June 28, 2011 (the "Credit Agreement") among the Borrower, the Guarantors, the lenders party thereto, UBS Securities LLC and Credit Suisse Securities (USA) LLC, as joint lead arrangers, UBS Loan Finance LLC, as swingline lender, UBS AG, Stamford Branch, as an issuing bank, as administrative agent and as collateral agent (in its capacity as the collateral agent, the "Collateral Agent"), Wells Fargo Bank, National Association, as documentation agent, Credit Suisse Securities (USA) LLC, as syndication agent, and Bank of America, N.A., as an issuing bank. Capitalized terms used but not defined herein have the meanings assigned in the Credit Agreement.

As used herein, the term "Companies" means Borrower and each of its Domestic Subsidiaries; and "Company" shall mean any one of them.

The undersigned hereby certify to the Collateral Agent as follows, in each case, as of the Closing Date:

1. Names.

(a) The exact legal name of each Company, as such name appears in its respective certificate of incorporation or any other organizational document, is set forth in Schedule 1(a). Each Company is (i) the type of entity disclosed next to its name in Schedule 1(a) and (ii) a registered organization except to the extent disclosed in Schedule 1(a). Also set forth in Schedule 1(a) is the organizational identification number, if any, of each Company that is a registered organization, the Federal Taxpayer Identification Number of each Company and the jurisdiction of formation of each Company.

(b) Set forth in Schedule 1(b) hereto is any other corporate or organizational names each Company has had in the past five years.

(c) Set forth in Schedule 1(c) is a list of all other names used by each Company, or any other business or organization to which each Company became the successor by merger, consolidation, acquisition, change in form, nature or jurisdiction of organization or otherwise, on any filings with the Internal Revenue Service at any time between June 1, 2006 and the date hereof. Except as set forth in Schedule 1(c), no Company has changed its jurisdiction of organization at any time during the past four months.

2. Current Locations.

(a) The chief executive office of each Company is located at the address set forth in Schedule 2(a) hereto.

(b) Set forth in **Schedule 2(b)** are all locations where each Company maintains any books or records relating to any Collateral.

(c) Set forth in **Schedule 2(c)** hereto are the names and addresses of all persons or entities other than each Company, such as lessees, consignees, warehousemen or purchasers of chattel paper, which have possession of any of the Collateral consisting of instruments, chattel paper, inventory or equipment, in each case with a fair market value in excess of \$100,000.

3. **Extraordinary Transactions.** No Company has been the subject of any merger (or acquired any assets constituting all or substantially all of the assets of a person or line of business of a person) or other corporate reorganization in the past five years, except as described in **Schedule 3** attached hereto.

4. **File Search Reports.** Attached hereto as **Schedule 4** is a true and accurate summary of file search reports from (A) the Uniform Commercial Code filing offices (i) in each jurisdiction identified in Section 1(a) with respect to each legal name set forth in Section 1 and (ii) in each jurisdiction described in **Schedule 1(c)** or **Schedule 3** relating to any of the transactions described in **Schedule 1(c)** or **Schedule 3** with respect to each legal name of the person or entity from which each Company purchased or otherwise acquired any of the Collateral and (B) each filing officer in each real estate recording office identified on **Schedule 7** with respect to real estate on which Collateral consisting of fixtures is or is to be located.

5. **Reserved.**

6. **Schedule of Filings.** Attached hereto as **Schedule 6** is a schedule of (i) the appropriate filing offices for the UCC “all assets” financing statements of each of the Companies relating to the Security Agreement and (ii) the appropriate filing offices for mortgages and fixture filings relating to the Mortgaged Properties.

7. **Real Property.** (a) Attached hereto as **Schedule 7(a)** is a list of all (i) real property owned, leased or otherwise held by each Company as of the Closing Date, (ii) addresses and uses of each real property and (iii) other information relating thereto required by such Schedule (including whether such property is to be subject to a mortgage in favor of the Collateral Agent on behalf of the Secured Parties (any such property, a “**Mortgaged Property**”). Except as described on **Schedule 7(b)** attached hereto, no Company has entered into any leases, subleases, tenancies, franchise agreements, licenses or other occupancy arrangements as owner, lessor, sublessor, licensor, franchisor or grantor with respect to any of the real property described on **Schedule 7(a)**.

8. **Reserved.**

9. **Stock Ownership and Other Equity Interests.** Attached hereto as **Schedule 9(a)** is a true and correct list of each of all of the authorized, and the issued and outstanding, stock, partnership interests, limited liability company membership interests or other equity interest of each Company and its Subsidiaries, with the exception of Borrower, and the record and beneficial owners of such stock, partnership interests, membership interests or other equity interests. Also set forth on **Schedule 9(b)** is each equity investment of each Company that represents 50% or less of the equity of the entity in which such investment was made. Attached hereto as **Schedule 9(c)** is an accurate organizational chart showing the ownership structure of each Company (other than the stockholders of the Borrower) and its Subsidiaries on the Closing Date and after giving effect to the Transactions.

10. Instruments and Tangible Chattel Paper. Attached hereto as **Schedule 10** is a true and correct list of all promissory notes, instruments (other than checks to be deposited in the ordinary course of business), tangible chattel paper, electronic chattel paper and other evidence of indebtedness held by each Company, in each case, evidenced in writing and with a face value in excess of \$100,000, including all intercompany notes between or among any two or more Companies or any of their Subsidiaries evidenced in writing.

11. Intellectual Property. Attached hereto as **Schedule 11(a)** is a schedule setting forth all of each Company's Patents and Trademarks (each as defined in the Security Agreement) registered or applied for with the United States Patent and Trademark Office, and all material Patent Licenses and material Trademark Licenses (each as defined in the Security Agreement), including the name of the registered owner and the registration number of each such Patent, Patent License, Trademark and Trademark License owned by each Company. Attached hereto as **Schedule 11(b)** is a schedule setting forth all of each Company's United States Copyrights (as defined in the Security Agreement) registered or applied for with the United States Copyright Office, and all material Copyright Licenses (as defined in the Security Agreement), including the name of the registered owner and the registration number of each such Copyright or Copyright License owned by each Company.

12. Commercial Tort Claims. Attached hereto as **Schedule 12** is a true and correct list of all Commercial Tort Claims (as defined in the Security Agreement) in excess of \$100,000 held by any Company, including a brief description thereof.

13. Deposit Accounts, Securities Accounts and Commodity Accounts. Attached hereto as **Schedule 13** is a true and complete list of all Deposit Accounts, Securities Accounts and Commodity Accounts (each as defined in the Security Agreement) maintained by each Company, including the name of each institution where each such account is held, the name of each such account and the name of each entity that holds each account.

14. Letter-of-Credit Rights. Attached hereto as **Schedule 14** is a true and correct list of all Letters of Credit evidenced in writing, with a face amount of at least \$100,000 and issued in favor of each Company, as beneficiary thereunder.

15. Motor Vehicles, Key Man Life Insurance Policies and Other Collateral. The value of all (a) motor vehicles and other goods (covered by certificates of title or ownership) owned by any Company, (b) key man life insurance policies held by any Company, (c) barges or other vessels owned or held by any Company, (d) aircraft and airplanes owned or held by any Company, (e) oil, gas, minerals and as extracted collateral owned or held by any Company and (g) rolling stock and trains owned or held by any Company, does not exceed \$5,000,000 in the aggregate for all such Collateral.

16. Material Permits. Attached hereto as **Schedule 16** is a true and correct list of any permits of any Company with any Governmental Authority with respect to which the consent of such Governmental Authority would be required in connection with the Transactions, the execution, delivery and performance of the Loan Documents or in connection with any acceleration or exercise of remedies under the Credit Agreement or the Security Agreement.

17. Government Contracts. Attached hereto as **Schedule 17** is a true and correct list (to the extent possible without violating the confidentiality provisions thereof) of all agreements and contracts any Company has with any Governmental Authority under which the annual revenue reasonably expected by such Company is more than \$500,000.

[The Remainder of this Page has been intentionally left blank]

L-1-5



IN WITNESS WHEREOF, we have hereunto signed this Perfection Certificate as of the date first set forth above.

DUCOMMUN INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

CMP DISPLAY SYSTEMS, INC.  
DUCOMMUN AEROSTRUCTURES, INC.  
DUCOMMUN TECHNOLOGIES, INC.  
MILTEC CORPORATION  
DUCOMMUN AEROSTRUCTURES NEW YORK, INC.  
DUCOMMUN LABARGE TECHNOLOGIES, INC.  
LABARGE/STC, INC.  
LABARGE ELECTRONICS, INC.  
LABARGE ACQUISITION COMPANY, INC.

By: \_\_\_\_\_  
Name:  
Title:

COMPOSITE STRUCTURES, LLC  
DUCOMMUN AEROSTRUCTURES MEXICO, LLC

By: Ducommun AeroStructures, Inc.,  
its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

**Schedule 1(a)**  
**Legal Names, Etc.**

<u>Legal Name</u>	<u>Type of Entity</u>	<u>Registered Organization (Yes/No)</u>	<u>Organizational Number<sup>34</sup></u>	<u>Federal Taxpayer Identification Number</u>	<u>State of Formation</u>
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<sup>34</sup> If none, so state.

**Schedule 1(b)**

**Prior Organizational Names**

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**Company/Subsidiary**

**Prior Name**

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**Schedule 1(c)**

**Changes in Corporate Identity; Other Names**

<u>Company/Subsidiary</u>	<u>Corporate Name of Entity</u>	<u>Action</u>	<u>State of Formation</u>	<u>List of All Other Names Used on Any Filings with the Internal Revenue Service During Past Five Years</u>	<u>Changes in Jurisdiction of Organization during past four months</u>
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**Schedule 2(a)**

**Chief Executive Offices**

Company/Subsidiary

Address

County

State

**Schedule 2(b)**

**Location of Books and Records**

Company/Subsidiary

Address

County

State

Schedule 2(c)

Locations of Collateral in Possession of Persons Other Than Company or Any Subsidiary

<u>Company/Subsidiary</u>	<u>Name of Entity in Possession of Collateral/Capacity of such Entity</u>	<u>Address/Location of Collateral</u>	<u>County</u>	<u>State</u>
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**Schedule 4**

**File Search Reports**

See attached.

**Schedule 6**

**Filings/Filing Offices**

<u>Type of Filing</u> <sup>35</sup>	Entity	Applicable Collateral Document [Mortgage or Security Agreement]	Jurisdictions
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<sup>35</sup> UCC-1 financing statement, fixture filing or mortgage.

**Schedule 7(a)**

**Real Property**

<u>Entity of Record</u>	<u>Address</u>	<u>Owned, Leased or Other Interest</u>	<u>Landlord / Owner if Leased or Other Interest</u>	<u>Description of Lease or Other Documents Evidencing Interest</u>	<u>Purpose/Use</u>	<u>Legal Description if a Mortgaged Property</u>	<u>To be Encumbered by Mortgage</u>	<u>Filing Office for Mortgage</u>
						[SEE EXHIBIT A-[ ] ATTACHED HERE TO]	[YES/NO]	

**Schedule 7(b)**

**Required Consents; Company Held Landlord's/ Grantor's Interests**

**Leases, Subleases, Tenancies, Franchise Agreements, Licenses or Other Occupancy Agreements Pursuant to which any Company holds Landlord's / Grantor's Interest**

**Schedule 9**

**(a) Equity Interests of Companies and Subsidiaries**

**Current Legal  
Entities Owned**

<b><u>Record Owner</u></b>	<b><u>Certificate No.</u></b>	<b><u>No. Shares/Interest</u></b>	<b><u>Percent Pledged</u></b>
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**(b) Other Equity Interests**

**(c) Organizational Chart**

See attached.

**Schedule 10**

**Instruments and Tangible Chattel Paper**

1. Promissory Notes:

<u>Entity</u>	<u>Principal Amount</u>	<u>Date of Issuance</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
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2. Chattel Paper:

**Schedule 11(a)**

**Patents and Trademarks**

**UNITED STATES PATENTS:**

Registrations:

OWNER	REGISTRATION NUMBER	DESCRIPTION
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Applications:

OWNER	APPLICATION NUMBER	DESCRIPTION
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Licenses:

LICENSEE	LICENSOR	REGISTRATION/ APPLI CATION NUMBER	DESCRIPTION
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**OTHER PATENTS:**

Registrations:

OWNER	REGISTRATION NUMBER	COUNTRY/STATE	DESCRIPTION
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Applications:

OWNER	APPLICATION NUMBER	COUNTRY/STATE	DESCRIPTION
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Licenses:

LICENSEE	LICENSOR	COUNTRY/STATE	REGISTRATION/ APPLICATION NUMBER	DESCRIPTION
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**UNITED STATES TRADEMARKS:**

Registrations:

OWNER	REGISTRATION NUMBER	TRADEMARK
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Applications:

OWNER	APPLICATION NUMBER	TRADEMARK
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Licenses:

LICENSEE	LICENSOR	REGISTRATION/ APPLICATION NUMBER	TRADEMARK
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**OTHER TRADEMARKS:**

Registrations:

OWNER	REGISTRATION NUMBER	COUNTRY/STATE	TRADEMARK
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Applications:

OWNER	APPLICATION NUMBER	COUNTRY/STATE	TRADEMARK
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Licenses:

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LICENSEE	LICENSOR	COUNTRY/STATE	REGISTRATION/ APPLICATION NUMBER	TRADEMARK
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**Schedule 11(b)**

**Copyrights**

**UNITED STATES COPYRIGHTS**

Registrations:

OWNER	TITLE	REGISTRATION NUMBER
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Applications:

OWNER	APPLICATION NUMBER
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Licenses:

LICENSEE	LICENSOR	REGISTRATION/ APPLICATION NUMBER	DESCRIPTION
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**OTHER COPYRIGHTS**

Registrations:

OWNER	COUNTRY/STATE	TITLE	REGISTRATION NUMBER
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Applications:

OWNER	COUNTRY/STATE	APPLICATION NUMBER
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Licenses:

LICENSEE	LICENSOR	COUNTRY/STATE	REGISTRATION/ APPLICATION NUMBER	DESCRIPTION
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**Schedule 12**

**Commercial Tort Claims**

**Schedule 13**

**Deposit Accounts, Securities Accounts and Commodity Accounts**

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OWNER

TYPE OF ACCOUNT

BANK OR  
INTERMEDIARY

ACCOUNT NUMBERS

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**Schedule 14**

**Letter of Credit Rights**

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**Schedule 16**

**Material Permits**

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**Schedule 17**

**Government Contracts**

[Form of]

**PERFECTION CERTIFICATE SUPPLEMENT**

This Perfection Certificate Supplement, dated as of [\_\_\_\_], 201[ ] is delivered pursuant to Section 5.01(e) of that Certain Credit Agreement dated as of June 28, 2011 (the "Credit Agreement") among Ducommun Incorporated, a Delaware corporation (the "Borrower"), the Subsidiary Guarantors party thereto, the lenders party thereto, UBS Securities LLC and Credit Suisse Securities (USA) LLC, as joint lead arrangers, UBS Loan Finance LLC, as swingline lender, UBS AG, Stamford Branch, as an issuing bank, as administrative agent and as collateral agent (in its capacity as the collateral agent, the "Collateral Agent"), Wells Fargo Bank, National Association, as documentation agent, Credit Suisse Securities (USA) LLC, as syndication agent, and Bank of America, N.A., as an issuing bank. Capitalized terms used but not defined herein have the meanings assigned in the Credit Agreement. As used herein, the term "Companies" means Borrower and each of its Domestic Subsidiaries; and "Company," shall mean any one of them.

The undersigned, the [\_\_\_\_] of the Borrower, hereby certify (in my capacity as [\_\_\_\_] and not in my individual capacity) to the Collateral Agent and each of the other Secured Parties that, as of the date hereof, there has been no change in the information described in the Perfection Certificate delivered on the Closing Date (as supplemented by any perfection certificate supplements delivered prior to the date hereof, the "Prior Perfection Certificate"), other than as follows:

**1. Names.**

(a) Except as listed on **Schedule 1(a)** attached hereto and made a part hereof, (x) **Schedule 1(a)** to the Prior Perfection Certificate sets forth the exact legal name of each Company, as such name appears in its respective certificate of incorporation or any other organizational document, (y) each Company is (i) the type of entity disclosed next to its name in **Schedule 1(a)** to the Prior Perfection Certificate and (ii) a registered organization except to the extent disclosed in **Schedule 1(a)** to the Prior Perfection Certificate and (z) set forth in **Schedule 1(a)** to the Prior Perfection Certificate is the organizational identification number, if any, of each Company that is a registered organization, the Federal Taxpayer Identification Number of each Company and the jurisdiction of formation of each Company.

(b) Except as listed on **Schedule 1(b)** attached hereto and made a part hereof, set forth in **Schedule 1(b)** of the Prior Perfection Certificate is any other corporate or organizational names each Company has had in the past five years.

**2. Current Locations.**

(a) Except as listed on **Schedule 2(a)** attached hereto and made a part hereof, the chief executive office of each Company is located at the address set forth in **Schedule 2(a)** of the Prior Perfection Certificate.

(b) Except as listed on **Schedule 2(b)** attached hereto and made a part hereof, the locations where each Company maintains any books or records relating to any Collateral are as set forth in **Schedule 2(b)** of the Prior Perfection Certificate.

(c) Except as listed on **Schedule 2(c)** attached hereto and made a part hereof, the names and addresses of all persons or entities other than each Company, such as lessees, consignees, warehousemen or purchasers of chattel paper, which have possession of any of the Collateral consisting of instruments, chattel paper, inventory or equipment, in each case with a fair market value in excess of \$100,000, are as set forth in **Schedule 2(c)** of the Prior Perfection Certificate.



3. **Extraordinary Transactions.** No Company has been the subject of any merger (or acquired any assets constituting all or substantially all of the assets of a person or line of business of a person) or other corporate reorganization in the past five years, except as described in **Schedule 3** attached hereto and made a part hereof and in **Schedule 3** of the Prior Perfection Certificate.

4. **Reserved.**

5. **Reserved.**

6. **Schedule of Filings.** Except as listed on **Schedule 6** attached hereto and made a part hereof, attached to the Prior Perfection Certificate as **Schedule 6** is a schedule of (i) the appropriate filing offices for the UCC “all assets” financing statements of each of the Companies relating to the Security Agreement and (ii) the appropriate filing offices for mortgages and fixture filings relating to the Mortgaged Properties.

7. **Real Property.** Except as listed on **Schedule 7(a)** attached hereto and made a part hereof, **Schedule 7(a)** to the Prior Perfection Certificate is a list of all (i) real property owned, leased or otherwise held by each Company as of the Closing Date, (ii) addresses and uses of each real property and (iii) other information relating thereto required by such Schedule (including whether such property is to be subject to a mortgage in favor of the Collateral Agent on behalf of the Secured Parties (any such property, a “**Mortgaged Property**”). Except as described on **Schedule 7(b)** attached hereto and made a part hereof and **Schedule 7(b)** of the Prior Perfection Certificate, no Company has entered into any leases, subleases, tenancies, franchise agreements, licenses or other occupancy arrangements as owner, lessor, sublessor, licensor, franchisor or grantor with respect to any of the real property described on **Schedule 7(a)**.

8. **Reserved.**

9. **Stock Ownership and Other Equity Interests.** Except as listed on **Schedule 9(a)** attached hereto and made a part hereof, **Schedule 9(a)** to the Prior Perfection Certificate is a true and correct list of each of all of the authorized, and the issued and outstanding, stock, partnership interests, limited liability company membership interests or other equity interest of each Company and its Subsidiaries, with the exception of Borrower, and the record and beneficial owners of such stock, partnership interests, membership interests or other equity interests. Except as set forth on **Schedule 9(b)** attached hereto and made a part hereof, **Schedule 9(b)** to the Prior Perfection Certificate sets forth each equity investment of each Company that represents 50% or less of the equity of the entity in which such investment was made. Except as set forth on **Schedule 9(c)** attached hereto and made a part hereof, **Schedule 9(c)** to the Prior Perfection Certificate is an accurate organizational chart showing the ownership structure of each Company (other than the stockholders of the Borrower) and its Subsidiaries as of the date hereof.

10. **Instruments and Tangible Chattel Paper.** Except as listed on **Schedule 10** attached hereto and made a part hereof, **Schedule 10** to the Prior Perfection Certificate is a true and correct list of all promissory notes, instruments (other than checks to be deposited in the ordinary course of business), tangible chattel paper, electronic chattel paper and other evidence of indebtedness held by each Company, in each case, evidenced in writing and with a face value in excess of \$100,000, including all intercompany notes between or among any two or more Companies or any of their Subsidiaries evidenced in writing.

11. **Intellectual Property.** Except as listed on **Schedule 11(a)** attached hereto and made a part hereof, **Schedule 11(a)** to the Prior Perfection Certificate is a schedule setting forth all of each Company’s Patents and Trademarks (each as defined in the Security Agreement) registered or applied for with the United States Patent and Trademark Office, and all material Patent Licenses and material Trademark

Licenses (each as defined in the Security Agreement), including the name of the registered owner and the registration number of each such Patent, Patent License, Trademark and Trademark License owned by each Company. Except as listed on **Schedule 11(b)** attached hereto and made a part hereof, **Schedule 11(b)** to the Prior Perfection Certificate is a schedule setting forth all of each Company's United States Copyrights (as defined in the Security Agreement) registered or applied for with the United States Copyright Office, and all material Copyright Licenses (as defined in the Security Agreement), including the name of the registered owner and the registration number of each such Copyright or Copyright License owned by each Company.

12. **Commercial Tort Claims.** Except as listed on **Schedule 12** attached hereto and made a part hereof, attached to the Prior Perfection Certificate as **Schedule 12** is a true and correct list of all Commercial Tort Claims (as defined in the Security Agreement) in excess of \$100,000 held by any Company, including a brief description thereof.

13. **Deposit Accounts, Securities Accounts and Commodity Accounts.** Except as listed on **Schedule 13** attached hereto and made a part hereof, attached to the Prior Perfection Certificate as **Schedule 13** is a true and complete list of all Deposit Accounts, Securities Accounts and Commodity Accounts (each as defined in the Security Agreement) maintained by each Company, including the name of each institution where each such account is held, the name of each such account and the name of each entity that holds each account.

14. **Letter-of-Credit Rights.** Except as listed on **Schedule 14** attached hereto and made a part hereof, attached to the Prior Perfection Certificate as **Schedule 14** is a true and correct list of all Letters of Credit evidenced in writing, with a face amount of at least \$100,000 and issued in favor of each Company, as beneficiary thereunder.

15. **Motor Vehicles, Life Insurance Policies and Other Collateral.** The value of all (a) motor vehicles and other goods (covered by certificates of title or ownership) owned by any Company, (b) key man life insurance policies held by any Company, (c) barges or other vessels owned or held by any Company, (d) aircraft and airplanes owned or held by any Company, (e) oil, gas, minerals and as extracted collateral owned or held by any Company and (g) rolling stock and trains owned or held by any Company, does not exceed \$5,000,000 in the aggregate for all such Collateral.

16. **Material Permits.** Except as listed on **Schedule 16** attached hereto and made a part hereof, attached to the Prior Perfection Certificate as **Schedule 16** is a true and correct list of any permits of any Company with any Governmental Authority with respect to which the consent of such Governmental Authority would be required in connection with the Transactions, the execution, delivery and performance of the Loan Documents or in connection with any acceleration or exercise of remedies under the Credit Agreement or the Security Agreement.

17. **Government Contracts.** Except as listed on **Schedule 17** attached hereto and made a part hereof, attached to the Prior Perfection Certificate as **Schedule 17** is a true and correct list (to the extent possible without violating the confidentiality provisions thereof) of all agreements and contracts any Company has with any Governmental Authority under which the annual revenue reasonably expected by such Company is more than \$500,000.

[The Remainder of this Page has been intentionally left blank]

IN WITNESS WHEREOF, we have hereunto signed this Perfection Certificate as of this \_\_\_\_ day of \_\_\_\_\_, 201\_.

DUCOMMUN INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

CMP DISPLAY SYSTEMS, INC.  
DUCOMMUN AEROSTRUCTURES, INC.  
DUCOMMUN TECHNOLOGIES, INC.  
MILTEC CORPORATION  
DUCOMMUN AEROSTRUCTURES NEW YORK, INC.  
DUCOMMUN LABARGE TECHNOLOGIES, INC.  
LABARGE/STC, INC.  
LABARGE ELECTRONICS, INC.  
LABARGE ACQUISITION COMPANY, INC.

By: \_\_\_\_\_  
Name:  
Title:

COMPOSITE STRUCTURES, LLC  
DUCOMMUN AEROSTRUCTURES MEXICO, LLC

By: Ducommun AeroStructures, Inc., its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

**Schedule 1(a)**

**Legal Names, Etc.**

<u>Legal Name</u>	<u>Type of Entity</u>	<u>Registered Organization (Yes/No)</u>	<u>Organizational Number<sup>a</sup></u>	<u>Federal Taxpayer Identification Number</u>	<u>State of Formation</u>
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<sup>a</sup> If none, so state.

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**Schedule 1(b)**

**Prior Organizational Names**

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**Company/Subsidiary**

**Prior Name**

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**Schedule 2(a)**

**Chief Executive Offices**

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**Company/Subsidiary**

**Address**

**County**

**State**

---

**Schedule 2(b)**

**Location of Books and Records**

**Company/Subsidiary**

**Address**

**County**

**State**

**Schedule 2(c)**

**Locations of Collateral in Possession of Persons Other Than Company or Any Subsidiary.**

<u>Company/Subsidiary</u>	<u>Name of Entity in Possession of Collateral/Capacity of such Entity</u>	<u>Address/Location of Collateral</u>	<u>County</u>	<u>State</u>
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**Schedule 3**

**Extraordinary Transactions**

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**Company/Subsidiary**

**Description of Transaction Including Parties Thereto**

**Date of Transaction**

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**Schedule 6**

**Filings/Filing Offices**

<u>Type of Filing</u> <sup>37</sup>	<u>Entity</u>	<u>Applicable Collateral Document [Mortgage or Security Agreement]</u>	<u>Jurisdictions</u>
<sup>37</sup> UCC-1 financing statement, fixture filing or mortgage.			

**Schedule 7(a).**

**Real Property.**

<b>Entity of Record</b>	<b>Address</b>	<b>Owned, Leased or Other Interest</b>	<b>Landlord / Owner if Leased or Other Interest</b>	<b>Description of Lease or Other Documents Evidencing Interest</b>	<b>Purpose/Use</b>	<b>Legal Description if a Mortgaged Property</b>	<b>To be Encumbered by Mortgage</b>	<b>Filing Office for Mortgage</b>
						[SEE EXHIBIT A-[ ] ATTACHED HERETO]	[YES/NO]	

**Schedule 7(b)**

**Leases, Subleases, Tenancies, Franchise Agreements, Licenses or Other Occupancy Arrangements Pursuant to which any Company holds Landlord's/Grantor's Interest**

**Schedule 9**

**(a) Equity Interests of Companies and Subsidiaries**

**Current Legal  
Entities Owned**

**Record Owner**

**Certificate No.**

**No. Shares/Interest**

**Percent Pledged**

**(b) Other Equity Interests**

**(c) Organizational Chart**

See attached.

**Schedule 10**

**Instruments and Tangible Chattel Paper**

1. Promissory Notes:

Entity

Principal Amount

Date of Issuance

Interest  
Rate

Maturity  
Date

2. Chattel Paper:

**Schedule 11(a)**

**Patents and Trademarks**

**UNITED STATES PATENTS:**

Registrations:

<u>OWNER</u>	<u>REGISTRATION NUMBER</u>	<u>DESCRIPTION</u>
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Applications:

<u>OWNER</u>	<u>APPLICATION NUMBER</u>	<u>DESCRIPTION</u>
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Licenses:

<u>LICENSEE</u>	<u>LICENSOR</u>	<u>REGISTRATION/ APPLICATION NUMBER</u>	<u>DESCRIPTION</u>
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**OTHER PATENTS:**

Registrations:

<u>OWNER</u>	<u>REGISTRATION NUMBER</u>	<u>COUNTRY/STATE</u>	<u>DESCRIPTION</u>
--------------	----------------------------	----------------------	--------------------

Applications:

<u>OWNER</u>	<u>APPLICATION NUMBER</u>	<u>COUNTRY/STATE</u>	<u>DESCRIPTION</u>
--------------	---------------------------	----------------------	--------------------

Licenses:

<u>LICENSEE</u>	<u>LICENSOR</u>	<u>COUNTRY/STATE</u>	<u>REGISTRATION/ APPLICATION NUMBER</u>	<u>DESCRIPTION</u>
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**UNITED STATES TRADEMARKS:**

Registrations:

<u>OWNER</u>	<u>REGISTRATION NUMBER</u>	<u>TRADEMARK</u>
--------------	----------------------------	------------------

Applications:

<u>OWNER</u>	<u>APPLICATION NUMBER</u>	<u>TRADEMARK</u>
--------------	---------------------------	------------------

Licenses:

<u>LICENSEE</u>	<u>LICENSOR</u>	<u>REGISTRATION/ APPLICATION NUMBER</u>	<u>TRADEMARK</u>
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**OTHER TRADEMARKS:**

Registrations:

<u>OWNER</u>	<u>REGISTRATION NUMBER</u>	<u>COUNTRY/STATE</u>	<u>TRADEMARK</u>
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Applications:

<u>OWNER</u>	<u>APPLICATION NUMBER</u>	<u>COUNTRY/STATE</u>	<u>TRADEMARK</u>
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Licenses:

<u>LICENSEE</u>	<u>LICENSOR</u>	<u>COUNTRY/STATE</u>	<u>REGISTRATION/ APPLICATION NUMBER</u>	<u>TRADEMARK</u>
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**Schedule 11(b)**

**Copyrights**

**UNITED STATES COPYRIGHTS**

Registrations:

<u>OWNER</u>	<u>TITLE</u>	<u>REGISTRATION NUMBER</u>
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Applications:

<u>OWNER</u>	<u>APPLICATION NUMBER</u>
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Licenses:

<u>LICENSEE</u>	<u>LICENSOR</u>	<u>REGISTRATION/ APPLICATION NUMBER</u>	<u>DESCRIPTION</u>
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**OTHER COPYRIGHTS**

Registrations:

<u>OWNER</u>	<u>COUNTRY/STATE</u>	<u>TITLE</u>	<u>REGISTRATION NUMBER</u>
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Applications:

<u>OWNER</u>	<u>COUNTRY/STATE</u>	<u>APPLICATION NUMBER</u>
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Licenses:

<u>LICENSEE</u>	LICENSOR	COUNTRY/STATE	REGISTRATION/ APPLICATION NUMBER	DESCRIPTION
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**Schedule 12**

**Commercial Tort Claims**

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**Schedule 13**

**Deposit Accounts, Securities Accounts and Commodity Accounts**

OWNER

TYPE OF ACCOUNT

BANK OR INTERMEDIARY

ACCOUNT NUMBERS

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**Schedule 14**

**Letter of Credit Rights**

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**Schedule 16**

**Material Permits**

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**Schedule 17**

**Government Contracts**



[Form of]  
**SOLVENCY CERTIFICATE**

June 28, 2011

Pursuant to Section 4.01(h) of the Credit Agreement, dated as of June 28, 2011 (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") among DUCOMMUN INCORPORATED, a Delaware corporation ("**Borrower**"), the Subsidiary Guarantors, the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, "**Arrangers**"), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, "**Swingline Lender**"), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, "**Administrative Agent**") for the Lenders and as collateral agent (in such capacity, "**Collateral Agent**") for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, "**Documentation Agent**"), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, "**Syndication Agent**") and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit, the undersigned hereby certifies, solely in its capacity as chief financial officer of Borrower, and not individually, as follows:

1. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.
2. In reaching the conclusions set forth in this certificate, I have conducted such reviews, analyses and inquiries reasonably deemed necessary or appropriate under the circumstances. In conducting my review and analysis, and as a basis for arriving at the conclusions in this certificate, I utilized methodologies, procedures, and considerations deemed relevant and customary under the circumstances. I also assessed general economic, industry, market, financial and other conditions and my experience in general.
3. As of the Closing Date, immediately after the consummation of the Transactions to occur on the Closing Date and immediately following the making of each Loan and issuance of each Letter of Credit and after giving effect to the application of the proceeds of each Loan and each Letter of Credit:
  - a. The fair value of the assets of each Loan Party, at a fair valuation, exceeds its debts and liabilities, subordinated, contingent or otherwise;
  - b. The present fair saleable value of the property of each Loan Party is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured;
  - c. Each Loan Party is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and

- d. Each Loan Party does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

For purposes of this certificate, the amount of any contingent liability at anytime shall be computed as the amount that would reasonably be expected to become an actual and matured liability, and any subrogation and/or contribution rights will be considered in determining the amount of such liability.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate in his capacity as chief financial officer of Borrower, on behalf of Borrower, as of the date first stated above.

DUCOMMUN INCORPORATED

By: \_\_\_\_\_  
Name:  
Title: Chief Financial Officer

[Form of]  
**INTERCOMPANY NOTE**

New York, New York

[date]

FOR VALUE RECEIVED, each of the undersigned, to the extent a borrower from time to time from any other entity listed on the signature page hereto (each, in such capacity, a “**Payor**”), hereby promises to pay on demand to the order of such other entity listed below (each, in such capacity, a “**Payee**”), in lawful money of the United States of America in immediately available funds, at such location in the United States of America as a Payee shall from time to time designate, the unpaid principal amount of all loans and advances (including trade payables) made by such Payee to such Payor. Each Payor promises also to pay interest on the unpaid principal amount of all such loans and advances in like money at said location from the date of such loans and advances until paid at such rate per annum as shall be agreed upon from time to time by such Payor and such Payee.

This note (“**Note**”) is an Intercompany Note referred to in the Credit Agreement dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among DUCOMMUN INCORPORATED, a Delaware corporation, the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, “**Arrangers**”), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, “**Swingline Lender**”), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, “**Administrative Agent**”) for the Lenders and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, “**Documentation Agent**”), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, “**Syndication Agent**”) and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit, and is subject to the terms thereof, and shall be pledged by each Payee pursuant to the Security Agreement, to the extent required pursuant to the terms thereof. Each Payee hereby acknowledges and agrees that the Administrative Agent may exercise all rights provided in the Credit Agreement and the Security Agreement with respect to this Note.

Anything in this Note to the contrary notwithstanding, the indebtedness evidenced by this Note owed by any Payor that is Borrower or a Guarantor to any Payee other than Borrower shall be subordinate and junior in right of payment, to the extent and in the manner hereinafter set forth, to all Obligations of such Payor under the Credit Agreement, including, without limitation, where applicable, under such Payor’s guarantee of the Obligations under the Credit Agreement (such Obligations and other indebtedness and obligations in connection with any renewal, refunding, restructuring or refinancing thereof, including interest thereon accruing after the commencement of any proceedings referred to in clause (i) below, whether or not such interest is an allowed claim in such proceeding, being hereinafter collectively referred to as “**Senior Indebtedness**”):

(i) In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or other similar proceedings in connection therewith, relative to any Payor or to its creditors, as such, or to its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of such Payor, whether or not involving insolvency or bankruptcy, then (x) the holders of Senior Indebtedness shall be paid in full in cash in respect of all amounts constituting Senior Indebtedness before any Payee is entitled to receive (whether directly or indirectly), or make any demands for, any payment on account of this Note and (y) until the holders of Senior Indebtedness are paid in full in cash in respect of all amounts constituting Senior Indebtedness, any payment or distribution to which such Payee would otherwise be entitled (other than debt securities of such Payor that are subordinated, to at least the same extent as this Note, to the payment of all Senior Indebtedness then outstanding (such securities being hereinafter referred to as “**Restructured Debt Securities**”)) shall be made to the holders of Senior Indebtedness;

(ii) if any default occurs and is continuing with respect to any Senior Indebtedness (including any Default under the Credit Agreement), then no payment or distribution of any kind or character shall be made by or on behalf of the Payor or any other Person on its behalf with respect to this Note; and

(iii) if any payment or distribution of any character, whether in cash, securities or other property (other than Restructured Debt Securities), in respect of this Note shall (despite these subordination provisions) be received by any Payee in violation of clause (i) or (ii) before all Senior Indebtedness shall have been paid in full in cash, such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness (or their representatives), ratably according to the respective aggregate amounts remaining unpaid thereon, to the extent necessary to pay all Senior Indebtedness in full in cash.

To the fullest extent permitted by law, no present or future holder of Senior Indebtedness shall be prejudiced in its right to enforce the subordination of this Note by any act or failure to act on the part of any Payor or by any act or failure to act on the part of such holder or any trustee or agent for such holder. Each Payee and each Payor hereby agree that the subordination of this Note is for the benefit of the Administrative Agent, the Issuing Bank and the Lenders and the Administrative Agent, the Issuing Bank and the Lenders are obligees under this Note to the same extent as if their names were written herein as such and the Administrative Agent may, on behalf of the itself, the Issuing Bank and the Lenders, proceed to enforce the subordination provisions herein.

The indebtedness evidenced by this Note owed by any Payor that is not Borrower or a Guarantor shall not be subordinated to, and shall rank *pari passu* in right of payment with, any other obligation of such Payor.

Nothing contained in the subordination provisions set forth above is intended to or will impair, as between each Payor and each Payee, the obligations of such Payor, which are absolute and unconditional, to pay to such Payee the principal of and interest on this Note as and when due and payable in accordance with its terms, or is intended to or will affect the relative rights of such Payee and other creditors of such Payor other than the holders of Senior Indebtedness.

Each Payee is hereby authorized to record all loans and advances made by it to any Payor (all of which shall be evidenced by this Note), and all repayments or prepayments thereof, in its books and records, such books and records constituting prima facie evidence of the accuracy of the information contained therein.

Each Payor hereby waives presentment, demand, protest or notice of any kind in connection with this Note. All payments under this Note shall be made without offset, counterclaim or deduction of any kind.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

**PAYORS:**

DUCOMMUN INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

CMP DISPLAY SYSTEMS, INC.  
DUCOMMUN AEROSTRUCTURES, INC.  
DUCOMMUN TECHNOLOGIES, INC.  
MILTEC CORPORATION  
DUCOMMUN AEROSTRUCTURES NEW YORK, INC.  
DUCOMMUN LABARGE TECHNOLOGIES, INC.  
LABARGE/STC, INC.  
LABARGE ELECTRONICS, INC.  
LABARGE ACQUISITION COMPANY, INC.

By: \_\_\_\_\_  
Name:  
Title:

COMPOSITE STRUCTURES, LLC  
DUCOMMUN AEROSTRUCTURES MEXICO, LLC

By: Ducommun AeroStructures, Inc.,  
its Sole Member

By: \_\_\_\_\_  
Name:  
Title:

DUCOMMUN TECHNOLOGIES (THAILAND) LTD.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

---

By: \_\_\_\_\_

Name:

Title:



**PAYEES:**

DUCOMMUN INCORPORATED

By: \_\_\_\_\_

Name:

Title:

CMP DISPLAY SYSTEMS, INC.  
DUCOMMUN AEROSTRUCTURES, INC.  
DUCOMMUN TECHNOLOGIES, INC.  
MILTEC CORPORATION  
DUCOMMUN AEROSTRUCTURES NEW YORK, INC.  
DUCOMMUN LABARGE TECHNOLOGIES, INC.  
LABARGE/STC, INC.  
LABARGE ELECTRONICS, INC.  
LABARGE ACQUISITION COMPANY, INC.

By: \_\_\_\_\_

Name:

Title:

COMPOSITE STRUCTURES, LLC  
DUCOMMUN AEROSTRUCTURES MEXICO, LLC

By: Ducommun AeroStructures, Inc.,  
its Sole Member

By: \_\_\_\_\_

Name:

Title:

DUCOMMUN TECHNOLOGIES (THAILAND) LTD.

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

[Form of]  
**NON-BANK CERTIFICATE**

Reference is made to the Credit Agreement dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") among DUCOMMUN INCORPORATED, a Delaware corporation ("**Borrower**"), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, "**Arrangers**"), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, "**Swingline Lender**"), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, "**Administrative Agent**") for the Lenders and as collateral agent (in such capacity, "**Collateral Agent**") for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, "**Documentation Agent**"), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, "**Syndication Agent**") and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit.

The undersigned is not (i) a bank (as such term is used in Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**")), (ii) a "10 percent shareholder" of 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.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

[ADDRESS]

Dated: \_\_\_\_\_, 201\_

[Form of]

**DISCOUNTED PREPAYMENT OPTION NOTICE**

Dated: \_\_\_\_\_, 201[ ]

To: UBS AG, STAMFORD BRANCH, as Administrative Agent

Ladies and Gentlemen:

This Discounted Prepayment Option Notice is delivered to you pursuant to Section 2.21(b) of that certain Credit Agreement, dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") among DUCOMMUN INCORPORATED, a Delaware corporation ("**Borrower**"), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, "**Arrangers**"), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, "**Swingline Lender**"), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, "**Administrative Agent**") for the Lenders and as collateral agent (in such capacity, "**Collateral Agent**") for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, "**Documentation Agent**"), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, "**Syndication Agent**") and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit.

The Borrower hereby notifies you that, effective as of [\_\_\_\_], 201[ ], pursuant to Section 2.21(b) of the Credit Agreement, Borrower is seeking:

1. to prepay Term Loans at a discount in an aggregate principal amount of [\$\_\_\_\_]<sup>38</sup> (the "**Proposed Discounted Prepayment Amount**");
2. a percentage discount to the par value of the principal amount of Term Loans greater than or equal to [\_\_\_\_]% of par value but less than or equal to [\_\_\_\_]% of par value (the "**Discount Range**")<sup>39</sup>; and
3. a Lender Participation Notice on or before [\_\_\_\_, 201\_] <sup>40</sup> (the "**Acceptance Date**").

<sup>38</sup> Insert amount that is minimum of \$15.0 million.

<sup>39</sup> The percentages inserted in clause (2) may be the same.

<sup>40</sup> Insert date (a Business Day) that is at least five Business Days after date of the Discounted Prepayment Option Notice.

Borrower expressly agrees that this Discounted Prepayment Option Notice is subject to the provisions of Section 2.21 of the Credit Agreement.

Borrower hereby represents and warrants to the Administrative Agent on behalf of the Administrative Agent and the Lenders, that (i) no Default or Event of Default has occurred and is continuing, or would result from Borrower making the Discounted Voluntary Prepayment, (ii) no proceeds from Revolving Loans or Swingline Loans will be used to make such Discounted Voluntary Prepayment and (iii) at the time of and after giving effect to such Discounted Voluntary Prepayment, the sum of undrawn Revolving Commitments and unrestricted cash and Cash Equivalents of the Borrower and the Guarantors will not be less than \$40.0 million.

Borrower respectfully requests that the Administrative Agent promptly notify each of the Lenders party to the Credit Agreement of this Discounted Prepayment Option Notice.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Discounted Prepayment Option Notice as of the date first above written.

DUCOMMUN INCORPORATED

By: \_\_\_\_\_

Name:

Title: Financial Officer

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[Form of]  
**LENDER PARTICIPATION NOTICE**

Dated: \_\_\_\_\_, 201[ ]

To: UBS AG, Stamford Branch  
 [ ]  
 [ ]  
 Attention: [ ]  
 Electronic Mail: [ ]

Ladies and Gentlemen:

Reference is made to (a) that certain Credit Agreement, dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among DUCOMMUN INCORPORATED, a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, “**Arrangers**”), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, “**Swingline Lender**”), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, “**Administrative Agent**”) for the Lenders and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, “**Documentation Agent**”), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, “**Syndication Agent**”) and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit, and (b) that certain Discounted Prepayment Option Notice, dated [\_\_\_\_], 201[ ], from the Borrower (the “**Discounted Prepayment Option Notice**”).

The undersigned Lender hereby gives you notice, pursuant to Section 2.21(c) of the Credit Agreement, that it is willing to accept a Discounted Voluntary Prepayment on Term Loans held by such Lender:

1. at a minimum price of [\_\_\_\_]% (the “**Acceptable Price**”)<sup>41</sup>; and
2. in a maximum aggregate principal amount of \$[\_\_\_\_] of Term Loans (the “**Offered Loans**”).

<sup>41</sup> Insert value within the Discount Range. Lender may specify different Acceptable Prices for different amounts of Offered Loans.

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The undersigned Lender expressly agrees that this offer is subject to the provisions of Section 2.21 of the Credit Agreement.

[Signature page follows]

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IN WITNESS WHEREOF, the undersigned has executed this Lender Participation Notice as of the date first above written.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:<sup>42</sup>

<sup>42</sup> \_\_\_\_\_  
Include a second signature if required.



[Form of]

**DISCOUNTED VOLUNTARY PREPAYMENT NOTICE**

Date: \_\_\_\_\_, 201\_

To: UBS AG, STAMFORD BRANCH, as Administrative Agent

Ladies and Gentlemen:

This Discounted Voluntary Prepayment Notice is delivered to you pursuant to Section 2.21(e) of that certain Credit Agreement, dated as of June 28, 2011 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") among DUCOMMUN INCORPORATED, a Delaware corporation ("**Borrower**"), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given it in Article I of the Credit Agreement), the Lenders, UBS SECURITIES LLC and CREDIT SUISSE SECURITIES (USA) LLC, as joint lead arrangers (in such capacity, "**Arrangers**"), UBS LOAN FINANCE LLC, as swingline lender (in such capacity, "**Swingline Lender**"), UBS AG, STAMFORD BRANCH, as an Issuing Bank, as administrative agent (in such capacity, "**Administrative Agent**") for the Lenders and as collateral agent (in such capacity, "**Collateral Agent**") for the Secured Parties and the Issuing Bank, WELLS FARGO BANK, NATIONAL ASSOCIATION, as documentation agent (in such capacity, "**Documentation Agent**"), CREDIT SUISSE SECURITIES (USA) LLC, as syndication agent (in such capacity, "**Syndication Agent**") and BANK OF AMERICA, N.A., as an Issuing Bank in respect of the Existing Letters of Credit.

The Borrower hereby irrevocably notifies you that, pursuant to Section 2.21(e) of the Credit Agreement, the Borrower will make a Discounted Voluntary Prepayment to each Term Loan Lender with Qualifying Loans, which shall be made:

1. on or before [\_\_\_\_\_, 201[ ]<sup>43</sup>, as determined pursuant to Section 2.21(b) of the Credit Agreement,
2. in the aggregate principal amount of \$[\_\_\_\_\_] of Term Loans, and
3. at a percentage discount to the par value of the principal amount of the Term Loans equal to [\_\_\_\_\_] % of par value (the "**Applicable Discount**").

<sup>43</sup> Insert date (a Business Day) that is no later than four Business Days after the Acceptance Date (or such later date as the Administrative Agent shall reasonably agree, given the time required to calculate the Applicable Discount and determine the amount and holders of Qualifying Loans).

The Borrower expressly agrees that this Discounted Voluntary Prepayment Notice is irrevocable and is subject to the provisions of Section 2.21 of the Credit Agreement.

Borrower hereby represents and warrants to the Administrative Agent on behalf of the Administrative Agent and the Lenders as follows:

1. No Default or Event of Default has occurred and is continuing or would result from the Borrower making the Discounted Voluntary Prepayment (after giving effect to any related waivers or amendments obtained in connection with such Discounted Voluntary Prepayment).
2. No proceeds from Revolving Loans or Swingline Loans will be used to make the Discounted Voluntary Prepayment.
3. At the time of and after giving effect to the Discounted Voluntary Prepayment, the sum of undrawn Revolving Commitments and unrestricted cash and Cash Equivalents of the Borrower and the Guarantors will not be less than \$40.0 million.
4. Borrower and its Subsidiaries have no MNPI at the time of the making of the Discounted Voluntary Prepayment that could reasonably be expected to affect a Term Loan Lender's decision as to whether to participate in the Discounted Voluntary Prepayment.

The Borrower respectfully requests that Administrative Agent promptly notify each of the Lenders party to the Agreement of this Discounted Voluntary Prepayment Notice.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Discounted Voluntary Prepayment Notice as of the date first above written.

DUCOMMUN INCORPORATED

By: \_\_\_\_\_

Name:

Title: Financial Officer

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NOT FOR IMMEDIATE RELEASE

### Ducommun Announces Closing of LaBarge Acquisition

LOS ANGELES, California (June 28, 2011) - Ducommun Incorporated (NYSE: DCO) today completed its acquisition of LaBarge, Inc. As planned, Ducommun acquired all issued and outstanding shares of LaBarge at \$19.25 per share in cash for a total purchase price of approximately \$338 million, including the assumption of LaBarge's outstanding debt (\$27.5 million). The consummation of the merger has resulted in the creation of Ducommun LaBarge Technologies ("DLT"), a business segment of Ducommun formed by the integration of LaBarge with Ducommun Technologies.

"We are pleased to announce that LaBarge is now a part of the Ducommun family, bringing together two great organizations dedicated to providing cutting-edge components and systems to a variety of growth industries in the U.S. and abroad," said Anthony J. Reardon, president and chief executive officer of Ducommun. "As a Tier 2 supplier of structural and electronic assemblies for the aerospace and defense, industrial, energy, and medical markets, we look forward to taking the next steps to expand our customer base, increase organic growth, and improve margins and cash flow generation. This is a watershed moment for Ducommun and one that we see strengthening the company and enhancing value for our stockholders going forward."

In conjunction with the closing of the transaction, Ducommun borrowed \$190 million under a new senior secured term loan, entered into a senior secured revolving credit facility of up to \$60 million, and issued \$200 million of 9.75% senior unsecured notes due 2018.

#### **About Ducommun Incorporated**

Founded in 1849, Ducommun Incorporated provides engineering and manufacturing services to the aerospace, defense, and other industries through a wide spectrum of electronic and structural applications. The company is an established supplier of critical components and assemblies for commercial aircraft and military and space vehicles as well as for the energy market, medical field, and industrial automation. It operates through three primary business units: Ducommun AeroStructures (DAS), Ducommun LaBarge Technologies (DLT), and Miltec. Additional information can be found at [www.ducommun.com](http://www.ducommun.com).

ESTABLISHED IN 1849 • 23301 WILMINGTON AVENUE • CARSON CA 90745 • TEL (310) 513-7280 • FAX (310) 513-7279

**CONTACT:** Joseph P. Bellino  
Vice President and Chief Financial Officer  
(310) 513-7211

or Chris Witty  
Investor Relations  
(646) 438-9385 / cwitty@darrowir.com

*Statements contained in this press release regarding other than recitation of historical facts are forward-looking statements. These statements are identified by words such as “may,” “will,” “begin,” “look forward,” “expect,” “believe,” “intend,” “anticipate,” “should”, “potential,” “estimate,” “continue,” “momentum” and other words referring to events to occur in the future. These statements reflect Company’s current view of future events and are based on its assessment of, and are subject to, a variety of risks and uncertainties beyond its control, including, but not limited to, the state of the world financial, credit, commodities and stock markets, any difficulties, delays or failure in, or unanticipated costs of, realizing the expected synergies of the LaBarge acquisition, and uncertainties regarding the Company, its businesses and the industries in which it operates, which are described in the Company’s filings with the Securities and Exchange Commission. The Company is under no obligation to (and expressly disclaims any such obligation to) update or alter its forward-looking statements whether as a result of new information, future events or otherwise.*

*This press release does not constitute an offer to sell or solicitation of an offer to purchase with respect to the notes or other securities, nor shall there be any sale of the notes in any state or jurisdiction in which such offer, solicitation or purchase would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.*

###