



How to Draft Loan Workout Agreements

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ABI'S 25TH ANNUAL WINTER LEADERSHIP CONFERENCE

How to Draft Loan Workout Agreements

Professional Development Track

Friday, December 6, 2013

9:30 - 11:00 a.m.

The following materials are sample forms of documents that may be used to restructure debt outside of bankruptcy. These forms will be referenced in this “skills” seminar as part of an active discussion of specific, heavily-negotiated provisions in certain of the most frequently used workout documents with a focus on real-world examples and drafting tips.

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SAMPLE

ADDRESS

_____, 2013

ADDRESS

CONFIDENTIALITY AGREEMENT

Ladies and Gentlemen:

ABC Corporation (together with its direct and indirect subsidiaries, the “**Company**”) has agreed to provide Lender/Investment Advisor (“we”, “us” or “our”) with certain information that the Company wishes to remain confidential in connection with our evaluation, negotiation and implementation (the “**Evaluation**”) of our participation in a potential transaction involving, among other things, a waiver, amendment, refinancing and/or restructuring of existing indebtedness of the Company and/or a broader transaction involving the Company (collectively, the “**Transaction**”). As a condition to receiving such information, we agree to treat all Confidential Information (as defined below) in accordance with the following terms:

1. We will keep the Confidential Information confidential and we will not use it for any purpose other than the Evaluation or any other purpose related to disclosure permitted hereunder. We will not disclose any Confidential Information to any person except (a) for disclosure to those of our Representatives (as defined below) who need to know Confidential Information for the purpose of the Evaluation or (b) to the extent such disclosure is (i) pursuant to the prior written consent of the Company or (ii) as otherwise permitted by this agreement or (iii) as otherwise permitted pursuant to section __ of the Credit Agreement (as amended, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), dated as of _____ between Company, Bank, as administrative agent, and the lenders party thereto.

2. We will inform each of our Representatives receiving Confidential Information that such information is confidential and subject to the terms of this agreement, which we will make known to them. We will direct our Representatives to comply with the confidentiality terms of this agreement and we will be responsible for any breach of the confidentiality terms of this agreement by them, *provided, however*, that we shall not be responsible for any breach of the terms of this agreement by those Representatives that are not one of our directors, members, officers or employees and we have informed of their obligation to comply with the confidentiality provisions hereof.

3. If we or our Representatives become required or are requested to disclose Confidential Information under or in connection with any court or administrative proceeding, applicable law, regulation, legal process (including by depositions, interrogatories, civil investigative demand, subpoena, discovery or information request or legal, administrative, judicial or governmental order or similar process) or stock exchange requirement, we will as promptly as practicable and legally permissible so advise the Company and, at the expense of the Company, we will use commercially reasonable efforts to cooperate with the Company in its efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded to any Confidential Information that is so disclosed. If, failing the entry of a protective order, we or our Representatives are, based on the advice of our or its counsel (which may, in either case, be internal counsel), required to disclose Confidential Information, we or our Representatives may disclose to the party requiring disclosure that portion of the Confidential Information that our or its counsel advises that we or our Representatives are required to disclose, without any liability hereunder. Notwithstanding the foregoing, notice to the Company as set forth in this paragraph 3 shall not be required where disclosure is in connection with an audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor and nothing contained herein shall restrict us from disclosing Confidential Information to the extent that we deem necessary in order to cooperate with the relevant authority, examiner or auditor.

4. As promptly as practicable upon the Company's written request, we will (and will direct our Representatives to) either destroy or deliver (at our sole election) to the Company all tangible Confidential Information not prepared by us or our Representatives, it being understood that it may not be practicable to destroy all forms of electronic "back-up" or "temp" files that are automatically created by our or our Representatives' systems. Such delivery or destruction will be confirmed by us in writing to the Company. Notwithstanding the foregoing, we and our Representatives may retain Confidential Information (including any and all emails, attachments contained in such emails and electronic files) as required by law, regulation, regulatory authority or our or our Representatives' internal document retention policies and procedures, *provided* that any Confidential Information so retained shall remain subject to the terms of this letter agreement, including the term hereof.

5. We are aware, and we will advise each of our Representatives receiving Confidential Information, that (a) the Confidential Information may contain material, non-public information, and (b) the United States securities laws prohibit any person who has material, non-public information about an issuer of securities from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such issuer's securities. However, nothing contained in this agreement shall prevent us or our affiliates from purchasing, selling or exercising any rights in respect

of debt securities or other debt instruments issued by the Company or its affiliates, subject to our compliance with applicable law.

6. As used in this letter agreement:

“Confidential Information” means all confidential or proprietary information about the Company or _____ (whether written or oral or in electronic or other form and whether prepared by the Company, any of its affiliates or their respective advisers or otherwise) that is or has been furnished to us or any of our Representatives at any time on or after _____ by or on behalf of the Company, any of its affiliates or any of their respective Representatives, together with those portions of written or electronically stored documentation prepared by us or our Representatives based on or reflecting, in whole or in part, such information, *provided, however*, that the term “Confidential Information” does not include any information that (i) is or becomes available to participants in the Company’s industry or to the public through no action or omission by us or our Representatives in breach of this agreement, (ii) is or becomes available to us or our Representatives on a non-confidential basis from a source (other than the Company, any of its affiliates or any of their respective Representatives) that to our knowledge at the time of disclosure is not prohibited from disclosing such information to us by a contractual, legal or fiduciary obligation to the Company, (iii) was or is independently developed by us or our Representatives without reference to the Confidential Information or (iv) is already in our possession. For purposes of this definition, “affiliates” of the Company include each person or entity that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the Company and includes _____ and its employees. For the avoidance of doubt, nothing contained herein shall relieve us of our confidentiality obligations under the documents governing the Company’s existing credit facilities and all information provided to us pursuant to the terms of such credit facilities shall continue to be governed by the terms of such credit facility documents and not this agreement.

“Representatives”, as to any person, means (a) any of such person’s directors, officers, members, general partners, affiliates, managed entities, managed accounts and employees and (b) any of such person’s agents, advisors (including, without limitation, attorneys, accountants, consultants, bankers, financial and other advisers) and any representatives of the foregoing. For the avoidance of doubt, nothing contained herein shall prohibit us from discussing a potential Transaction with our potential debt financing sources and potential co-investors provided that we do not share Confidential Information, unless otherwise permitted hereunder.

7. The confidentiality provisions of this letter shall terminate on _____, except for any obligations we have arising (a) from a prior breach of this letter agreement or (b) under paragraph 4 of this letter agreement, which shall survive such termination.

8. Money damages may not be a sufficient remedy for any violation of this agreement and, accordingly, the aggrieved party will be entitled to seek specific performance and injunctive relief as remedies for any violation, in addition to all other remedies available at law or equity. Each party agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

9. Both parties irrevocably consent to personal jurisdiction in any action in connection with this agreement brought in any federal or state court located in the City of New York, Borough of Manhattan.

10. This agreement contains the entire agreement between us and the Company concerning the subject matter hereof; it being understood that any information delivered to the Lenders under, and as defined in, the Credit Agreement, and, accordingly, to us in our capacity as a Lender thereunder, and clearly identified as such, shall be subject only to the terms and provisions of section ___ of the Credit Agreement. This agreement will be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No amendment, waiver or other modification hereof will be effective unless it is in writing and signed by the parties hereto. This letter agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute the same agreement.

11. This agreement will be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflict of laws thereof insofar as the application of the law of another jurisdiction would be required thereby.

12. Both parties agree that, unless and until a final, legally binding agreement is entered into between the Company and us with respect to the Transaction, neither the Company nor us will be under any legal obligation of any kind whatsoever with respect to the Transaction by virtue of this or any other written or oral expression, except with respect to the matters specifically agreed to herein. Nothing contained in any discussions between us and the Company or in any Confidential Information shall be deemed to constitute a representation or warranty. Except for the matters set forth in this agreement or in any such binding agreement, neither party shall be entitled to rely on any statement, promise, agreement, or understanding, whether oral or written, or any custom, usage of trade, course of dealing, or conduct.

13. Except to the extent otherwise permitted under this agreement, both parties hereto will not, and will direct their respective Representatives not to, without the prior written consent of the other party hereto, disclose to any person (other than their

Representatives) (i) the fact that the Confidential Information has been made available to us, (ii) that we are considering the Transaction, (iii) that discussions or negotiations are taking or have taken place concerning the Transaction or involving the Company or (iv) any term, condition or other fact relating to the Transaction or such discussions or negotiations, including, without limitation, the status thereof or the subject matter of this agreement; *provided, however*, that we may disclose to and discuss with (x) _____ and its managed affiliates and entities and (y) any other current or prospective lender, or current agent under the Company's existing credit facilities that we know to have executed a confidentiality agreement with the Company in connection with the Evaluation of a potential Transaction (i) that the Confidential Information has been made available to us; (ii) that we are considering the Transaction; (iii) that discussions or negotiations are taking or have taken place concerning the Transactions or involving the Company or (iv) any term, condition or other fact relating to the Transactions or such discussions or negotiations, including, without limitation, the status thereof or the subject matter of this agreement; *provided, further*, that the Company shall notify us promptly if it has entered into a confidentiality agreement with any such person in connection with the Evaluation of a potential Transaction.

Please confirm that the foregoing is our agreement by signing and returning to us a copy of this letter agreement.

Very truly yours,

LENDER/INVESTMENT ADVISOR

By: _____

Name:

Title:

Accepted and agreed to as of
the date first above written:

COMPANY

By: _____

Name:

Title:

SAMPLE

WAIVER

This WAIVER (“Waiver”), is dated as of _____, and refers to the Credit Agreement dated as of _____ (the “Credit Agreement”; capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Credit Agreement), by and among ABC Corporation (the “Borrower”), Parent (the “Parent”), the several Lenders from time to time party thereto, and Bank, as agent (the “Administrative Agent”).

RECITALS

WHEREAS, the Parent has informed the Administrative Agent and each Lender party hereto that the Borrower may not be able to _____ as required under Section ____ of the Credit Agreement, and as a direct result, one or more Defaults and/or Events of Default under Section ____ may occur (such Defaults and/or Events of Default, collectively, the “Specified Defaults”).

WHEREAS, upon Parent’s request, the Required Lenders have agreed subject to the terms and conditions set forth herein, to waive the Specified Defaults during the Waiver Period (as hereinafter defined).

NOW, THEREFORE, in consideration of the foregoing, the terms, covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Limited Waiver; Waiver Default Rights and Remedies.

(a) As of the Effective Date, the Required Lenders hereby waive the Specified Defaults until the expiration or termination of the Waiver Period. As used herein, the term “Waiver Period” shall mean the period beginning on the Effective Date (as hereinafter defined) and ending on 11:59 p.m. New York City time on _____.

(b) Upon the termination or expiration of the Waiver Period, the agreement of the Required Lenders hereunder to waive the Specified Defaults shall immediately terminate without the requirement of any demand, presentment, protest, or notice of any kind, all of which the Borrower and each other Loan Party hereby waives. The Borrower and each other Loan Party agrees that the Lenders and the Administrative Agent may at any time after the expiration or termination of the Waiver Period proceed to exercise any and all of its rights and remedies under any or all of the Credit Agreement, any other Loan Document and/or applicable law, all of which rights and remedies are fully reserved by the Lenders and the Administrative Agent, including, without limitation, arising as a result of the Specified Defaults. For the avoidance of doubt, upon the termination or expiration of the Waiver Period, the Specified Defaults shall constitute Events of Default.

(c) Any agreement by the Required Lenders to extend the Waiver Period, if any, must be set forth in writing and signed by the Required Lenders. The Borrower and each other Loan Party acknowledges that neither the Administrative Agent nor any Lender has made any assurance concerning any possibility of an extension of the Waiver Period.

(d) The Borrower and each other Loan Party acknowledges and agrees that any Loan or other financial accommodation which the Lenders make on or after the Effective Date has been made by such party in reliance upon, and is consideration for, among other things, the general releases and indemnities contained in Section 2 and the other covenants, agreements, representations and warranties of the Borrower and the other Loan Parties hereunder.

(e) Notwithstanding anything herein to the contrary, no Lender will be required to provide any further financial accommodations under the Credit Agreement or any other Loan Document during the Waiver Period.

Section 2. General Release; Covenant Not to Sue.

(a) In consideration of, among other things, the Required Lenders' and the Administrative Agent's execution and delivery of this Waiver, the Borrower and each other Loan Party, on behalf of itself and its agents, representatives, officers, directors, advisors, employees, subsidiaries, affiliates, successors and assigns (collectively, the "Releasors"), hereby forever waives, releases and discharges, to the fullest extent permitted by law, each Releasee (as hereinafter defined) from any and all liens, claims, interests and causes of action of any kind or nature (collectively, the "Claims") that such Releasor now has or hereafter may have against the Administrative Agent or any Lender in their capacity as such, and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys and other representatives of each of the foregoing, in their capacity as such (collectively, the "Releasees"), based on facts existing on or before the Effective Date that relate to: (i) any Loan Document, (ii) any transaction, action or omission contemplated thereby, or (iii) any aspect of the dealings or relationships between or among the Borrower and the other Loan Parties, on the one hand, and the Administrative Agent or any Lender, on the other hand, relating to any Loan Document or transaction, action or omission contemplated thereby. The provisions of this Section shall survive the termination of this Waiver, the Credit Agreement, any other Loan Document and payment in full of the Obligations.

(b) The Borrower and each other Loan Party, on behalf of itself and its successors, assigns, and other legal representatives, hereby unconditionally and irrevocably agrees that it will not sue any Releasee on the basis of any Claim released, remised and discharged by the Borrower or any other Loan Party pursuant to Section 2(a). If the Borrower, any other Loan Party or any of its successors, assigns or other legal representatives violates the foregoing covenant, the Borrower and each other Loan Party, for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

Section 3. Representations, Warranties and Covenants.

To induce the Required Lenders and the Administrative Agent to execute and deliver this Waiver, the Borrower and each other Loan Party represents, warrants and covenants that:

(a) The individual executing this Waiver on behalf of the Borrower and each other Loan Party is authorized to so act and the execution of this Waiver by such individual makes the obligations set forth herein legal, valid, binding and enforceable against the Borrower or such other Loan Party, as applicable, in accordance with their respective terms, except as the enforcement thereof may be subject to (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such enforcement is sought in a proceeding in equity or at law).

(b) Except with respect to the Specified Defaults, each of the representations and warranties contained in the Credit Agreement and each other Loan Document is true and correct on and as of the date hereof as if made on the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date, and each of the agreements and covenants in the Credit Agreement and each other Loan Document is hereby reaffirmed with the same force and effect as if each were separately stated herein and made as of the date hereof.

(c) Neither the execution, delivery and performance of this Waiver nor the consummation of the transactions contemplated hereby does or shall contravene, result in a breach of, or violate (i) any provision of the Borrower's or any other Loan Party's certificate or articles of incorporation or formation, bylaws, operating agreement, limited partnership agreement or other governing documents, (ii) any law or regulation, or any order or decree of any court or government instrumentality, or (iii) any indenture, mortgage, deed of trust, lease, agreement or other instrument to which the Borrower or any other Loan Party is a party or by which the Borrower or any other Loan Party or any of their respective property is bound.

(d) As of the date hereof, except for the Specified Defaults, no Default or Event of Default has occurred or is continuing under the Credit Agreement or any other Loan Document.

(e) The Borrower agrees that it shall not, and shall not permit any of its subsidiaries to incur any Indebtedness under the Revolving Credit Agreement other than solely to refinance reimbursement obligations with respect to draws under letters of credit outstanding as of the date hereof. A failure to comply with this agreement shall constitute an Event of Default under the Credit Agreement.

Section 4. Ratification of Liability. The Borrower and each other Loan Party hereby ratifies and reaffirms all of its payment and performance obligations and obligations to indemnify, contingent or otherwise, under this Waiver and each other Loan Document to which such party is a party, and each such party hereby ratifies and reaffirms its grant of Liens on, or security interests in, its properties pursuant to such Loan Documents to which it is a party as security for the Obligations, and confirms and agrees that such Liens and security interests hereafter secure all of the Obligations. The Borrower and each other Loan Party (a) acknowledges receipt of a copy of this Waiver and all other agreements, documents and instruments executed and/or delivered in connection herewith, (b) consents to the terms and conditions of same, and (c) agrees and acknowledges that, except as set forth herein, each of the Loan Documents remains in full force and effect and is hereby ratified and confirmed.

Section 5. Miscellaneous. Except as expressly provided in this Waiver, all of the terms and conditions of the Credit Agreement remain in full force and effect. For the avoidance of doubt, the Borrower will be required to make all scheduled payments of principal, interest, fees and other amounts during the Waiver Period. The Waiver set forth herein is effective solely for the purposes as set forth herein and shall be limited precisely as written and, except to the extent set forth herein, nothing contained herein shall by implication or otherwise, constitute a waiver of or consent to any other terms, provisions or conditions of the Credit Agreement or any other Loan Document or limit, impair or prejudice any right or remedy that any Agent or Lender party hereto may have or may in the future have under the Credit Agreement or any other Loan Document, which shall remain in full force and effect, and the Lenders hereby reserve all such rights and remedies. Each Loan Party hereby reaffirms all obligations of such Loan Party under the Credit Agreement and each other Loan Document. On and after the date hereof, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import, and each reference in the Notes to the Credit Agreement, shall mean and be a reference to the Credit Agreement as waived hereby, and this Waiver and the Credit Agreement shall be read together and construed as a single instrument. This Waiver may be executed by one or more of the parties hereto on any number of separate counterparts (including by facsimile or other electronic transmission), and all of said counterparts taken together shall be deemed to constitute one and the same document. This Waiver shall become effective as of the date (the "Effective Date") on which (i) the Administrative Agent shall have received this Waiver executed and delivered by the Required Lenders, the Borrower and the other Loan Parties, (ii) that certain Waiver to the Revolving Credit Agreement shall be in full force and effect and shall be in form and substance reasonably satisfactory to the Required Lenders and (iii) that certain Waiver to the Second Lien Credit Agreement shall be in full force and effect and shall be in form and substance reasonably satisfactory to the Required Lenders. The Administrative

Agent shall give prompt notice in writing to the Borrower of the occurrence of the Effective Date. THIS WAIVER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned has caused this Waiver to be duly executed and delivered as of the date first above written.

BORROWER

By: _____

PARENT

By: _____
Name:
Title:

[EACH OTHER LOAN PARTY]

By: _____
Name:
Title:

ADMINISTRATIVE AGENT

By: _____
Name:
Title:

LENDERS:

By signing below, you have indicated your consent to the Waiver to the Credit Agreement

Name of Institution:

By: _____
Name:
Title

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (this “Agreement”), dated as of ____, 2013, is entered by and among Company, LLC, a Delaware limited liability company, Holdings, LP, a Delaware limited partnership, Subsidiary, Ltd., a ____ limited partnership, each subsidiary of the Parent listed as a “Guarantor” on the signature pages of the Note Purchase Agreement (as defined below), Lender I, a Delaware limited liability company, as collateral agent, and Lender II, as a “Purchaser” under the Note Purchase Agreement.

RECITALS

A. The Note Parties, the Second Lien Agent and the Purchasers are parties to that certain Note Purchase Agreement, dated as ____ (as amended by the Amendment Agreement, dated as of ____ and as further amended from time to time, the “Note Purchase Agreement”), pursuant to which the Purchasers purchased the Notes.

B. The Second Lien Agent and the Purchasers have been made aware that (1) pursuant to Sections [] of the Note Purchase Agreement, Events of Default have occurred and are continuing or are expected to occur and be continuing as a result of the Note Parties’ failure to comply with ____, collectively, the “Designated Defaults”) and (2) events of default have occurred and are continuing or are expected to occur and be continuing under the First Lien Financing Agreement as a result of ____, collectively, the “Designated First Lien Defaults”).

C. The existence of the Designated Defaults and any Defaults or Events of Default that may arise as a result of the Designated Defaults notwithstanding, the Note Parties have requested that the Second Lien Agent and the Purchasers agree, subject to the terms and conditions herein set forth, to forbear, for a specified period of time, from exercising their respective rights and remedies with respect to the Designated Defaults under the Note Purchase Agreement, the other Second Lien Financing Documents or applicable law.

D. The Second Lien Agent and the Purchasers agree to accommodate such requests of the Note Parties, subject to the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, and subject to the terms and conditions hereof, the Second Lien Agent, the Purchasers and the Note Parties hereby agree as follows:

1. **Incorporation of Recitals; Defined Terms.** The Recitals set forth above are acknowledged by the Note Parties to be true and correct in all material respects and hereby are incorporated into this Agreement by this reference. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Note Purchase Agreement. For purposes of this Agreement, the following terms shall have the respective meanings ascribed thereto below:

Designated Defaults – see the Recitals above.

Designated First Lien Defaults – see the Recitals above.

Effective Date shall mean the date on which all of the conditions set forth in Section 5 hereof have been satisfied.

Forbearance Period – see Section 2 hereof.

Forbearance Termination Date shall mean the earlier to occur of (i) 12:00 p.m. (New York City time) on _____ and (ii) the date on which the forbearance effectuated hereby is terminated as a result of the occurrence of any of the events described in Section 6 hereof.

Note Purchase Agreement – see the Recitals above.

Related Person shall mean any affiliates, subsidiaries, successors, assigns, participants, directors, officers, employees, agents, consultants and attorneys of the Second Lien Agent or the Purchasers.

2. Agreements of the Purchasers.

- (a) Subject to the conditions herein set forth (including, without limitation, the conditions contained in Section 5 hereof) and in reliance upon the representations, warranties, agreements, covenants and acknowledgments of the Note Parties herein contained, the Second Lien Agent and the Purchasers agree that, during the period commencing on the Effective Date and ending on the Forbearance Termination Date (the “Forbearance Period”), solely by reason of the existence of the Designated Defaults, (i) the Second Lien Agent and each Purchaser shall forbear from exercising any of its respective rights and remedies under the Note Purchase Agreement, the other Second Lien Financing Documents and applicable law solely as a result of the Designated Defaults, including the right to enforce the collection of any of the Obligations or to foreclose their security interests in any of the Collateral during the Forbearance Period or rights and remedies under any deposit account, blocked account, control account, bank agency, lockbox or other agreement to which the Second Lien Agent or any Purchaser is a party relating to any deposit or other account of any Note Party and (ii) they will not implement the default rate of interest specified in Section [] of the Note Purchase Agreement.
- (b) The Second Lien Agent and the Purchasers hereby agree that, notwithstanding any provisions of the Note Purchase Agreement to the contrary, commencing as of the Effective Date and continuing through the Forbearance Termination Date, interest on the Notes shall be payable by capitalizing the unpaid interest due and payable on each Interest Payment Date to the principal of the Notes.
- (c) The Second Lien Agent and the Purchasers hereby consent to Section 3(c) of that certain Forbearance Agreement, to be entered into on or about the date hereof, by and among the Note Parties and the Subordinated Creditors party thereto.
- (d) The agreement of the Second Lien Agent and the Purchasers to forbear hereunder is temporary and limited in nature as set forth herein and shall not be deemed:
 - (i) to preclude or prevent the Second Lien Agent or the Purchasers from

exercising any rights or remedies under the Note Purchase Agreement, the other Second Lien Financing Documents or applicable law arising on account of (A) any Default or Event of Default other than the Designated Defaults or (B) the Designated Defaults from and after the Forbearance Termination Date; (ii) to effect any amendment, modification or supplement of the Note Purchase Agreement or any of the other Second Lien Financing Documents, all of which shall remain in full force and effect in accordance with their respective terms (except as otherwise expressly provided herein), or constitute a waiver or release of any right, claim or cause of action, all of which are expressly reserved; (iii) to constitute a waiver of the Designated Defaults, any Default or any other Event of Default that may have occurred, be existing or hereafter occur, or any term or provision of the Note Purchase Agreement or any of the other Second Lien Financing Documents; or (iv) to establish a custom or course of dealing between or among the Note Parties, the Second Lien Agent or the Purchasers, or any of them.

3. **Agreements of the Note Parties.**

- (a) Each Note Party hereby agrees and acknowledges that, the implementation of the Forbearance Period in accordance with the terms hereof notwithstanding, the Designated Defaults constitute existing Events of Default for all purposes under the Second Lien Financing Documents, including, without limitation, for purposes of determining whether or not certain actions may be taken or otherwise acquiesced to by or on behalf of the Parent or any other Note Party, except, during the Forbearance Period with respect to the Designated Defaults, for permitting the Purchasers to accelerate payment of the Notes or exercise other remedies.
- (b) Each Note Party hereby further acknowledges and agrees that, the implementation of the Forbearance Period in accordance with the terms hereof notwithstanding, the Note Parties are prohibited by the terms of the Second Lien Financing Documents from taking certain actions, including without limitation (i) making certain Restricted Payments as set forth in Sections [] of the Note Purchase Agreement, (ii) reinvesting Net Cash Proceeds as set forth in Sections [] of the Note Purchase Agreement and (iii) incurring indebtedness as set forth in clause [] of the definition of “Permitted Indebtedness” in Section [] of the Note Purchase Agreement. Accordingly, each Note Party acknowledges and agrees that any such actions taken by the Note Parties will constitute additional Events of Default under the Note Purchase Agreement and the other Second Lien Financing Documents.
- (c) Without in any way limiting any of the prohibitions presently existing under the Note Purchase Agreement, each Note Party hereby agrees that, from the date hereof until the Forbearance Termination Date, it shall not dispose of any material assets, refinance or replace the First Lien Loan Documents as in effect on the date hereof or make any payment under any Management Agreement or the Administrative Services Agreement.

4. **Ratification of Liability; Acknowledgment of Rights.** Each Note Party hereby ratifies and confirms its liabilities, obligations and agreements under the Note Purchase Agreement and the other Second Lien Financing Documents and acknowledges that except to the limited extent of the Second Lien Agent's and the Purchasers' agreement to forbear contained in this Agreement, neither the Second Lien Agent nor any of the Purchasers waives, diminishes or limits any term or condition contained in the Note Purchase Agreement or in any of the other Second Lien Financing Documents.

5. **Conditions to Effectiveness.** The effectiveness of the Second Lien Agent's and the Purchasers' obligations and agreements under this Agreement is subject to the satisfaction of all of the following conditions in a manner, form and substance reasonably satisfactory to the Second Lien Agent and the Purchasers:

- (a) **Representations and Warranties.** The representations and warranties of each of the Note Party set forth in this Agreement, the Note Purchase Agreement and the other Second Lien Financing Documents shall be true and correct in all material respects as of the Effective Date, except (a) with regard to the existence of the Designated Defaults (or the facts and circumstances resulting therein), and (b) to the extent such representations and warranties (i) expressly related to an earlier date, in which case such representation and warranties shall have been true and correct in all material respects as of such earlier date or (ii) are qualified by materiality, contain dollar thresholds or have Material Adverse Effect qualifiers, in which case, such representations and warranties shall be true and correct in all respects.
- (b) **Delivery of Agreement.** This Agreement shall have been duly authorized, executed and delivered to the Purchasers by each Note Party.
- (c) **Delivery of Officer's Certificate.** A certificate in the form of Annex I to this Agreement, or such other form acceptable to the Purchasers, dated as of the date hereof and signed by the Parent shall have been duly authorized, executed and delivered to the Purchasers by the Parent.

6. **Automatic Termination of Forbearance Period.** The Second Lien Agent's and the Purchasers' agreement to forbear pursuant to this Agreement shall terminate automatically, without notice or any other further act or instrument, upon the occurrence of any of the following:

- (a) Any Note Party repudiates or asserts a defense to any obligation or liability under the Note Purchase Agreement, this Agreement or any of the other Second Lien Financing Documents or makes or pursues a claim against the Second Lien Agent, any of the Purchasers or any other Related Person.
- (b) Any Note Party, either jointly or severally, initiates with respect to or pursues any damages, losses, claims, demands, liabilities, obligations, actions or causes of action whatsoever against the Second Lien Agent, the Purchasers or any other Related Person on account of or in any way touching, concerning, arising out of,

related to or founded upon the Note Purchase Agreement, the other Second Lien Financing Documents or the transactions contemplated or otherwise evidenced thereby.

- (c) Any Default or Event of Default (other than the Designated Defaults) exists.
- (d) Any Note Party breaches any agreement or covenant contained in this Agreement.
- (e) Any of the First Lien Lenders or the First Lien Agent takes any action, directly or indirectly, to (i) sue for payment of, or to initiate or participate with others in any suit, action or proceeding against the Note Parties or any other obligor of the First Lien Obligations or any other person to (1) enforce payment of or to collect the whole or any part of the First Lien Obligations or (2) commence judicial enforcement of any of the rights and remedies under the First Lien Loan Documents or applicable law with respect to the First Lien Obligations, (ii) to accelerate all or any part of the First Lien Obligations or (iii) to take any action under the provisions of any state or federal law, including, without limitation the Uniform Commercial Code, foreign law (if applicable) or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any property or assets of any Note Party or any other obligor of the First Lien Obligations or otherwise realize upon the First Lien Obligations or any part thereof.
- (f) Any of the Subordinated Creditors takes any action, directly or indirectly, to (i) sue for payment of, or to initiate or participate with others in any suit, action or proceeding against the Note Parties or any other obligor of the Subordinated Indebtedness or any other person to (1) enforce payment of or to collect the whole or any part of the Subordinated Indebtedness or (2) commence judicial enforcement of any of the rights and remedies under the Subordinated Loan Documents or applicable law with respect to the Subordinated Indebtedness, (ii) to accelerate all or any part of the Subordinated Indebtedness or (iii) to take any action under the provisions of any state or federal law, including, without limitation the Uniform Commercial Code, foreign law (if applicable) or under any contract or agreement, to realize upon the Subordinated Indebtedness or any part thereof.
- (g) Any of the Junior Subordinated Creditors takes any action, directly or indirectly, to (i) sue for payment of, or to initiate or participate with others in any suit, action or proceeding against the Note Parties or any other obligor of the obligations under the Junior Subordinated Loan Documents or any other person to (1) enforce payment of or to collect the whole or any part of the obligations under the Junior Subordinated Loan Documents or (2) commence judicial enforcement of any of the rights and remedies under the Junior Subordinated Loan Documents or applicable law with respect to the obligations under the Junior Subordinated Loan Documents, (ii) to accelerate all or any part of the obligations under the Junior Subordinated Loan Documents or (iii) to take any action under the provisions of any state or federal law, including, without limitation the Uniform Commercial Code, foreign law (if applicable) or under any contract or agreement, to realize

upon the obligations under the Junior Subordinated Loan Documents or any part thereof.

- (h) Any of the events set forth in clauses [] through [] of Section [] of the Subordination Agreement occurs and 10 days have lapsed since the Purchasers and the First Lien Agent have received notice of any Subordinated Creditor's intention to take any Enforcement Action (as defined in the Subordination Agreement).

7. **Representations and Warranties.** Each Note Party represents and warrants to the Second Lien Agent and the Purchasers that: (i) it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) upon the execution and delivery hereof, this Agreement shall be valid, binding and enforceable upon such Note Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditor's rights generally or by equitable principles relating to enforceability; (iii) the execution and delivery of this Agreement does not and will not contravene, conflict with, violate or constitute a default under the articles of incorporation, by-laws, operating agreement, certificate of organization or other constituent documents of such Note Party or any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which such Note Party is a party or is bound or which is binding upon or applicable to all or any portion of such Note Party's property; (iv) no Default or Event of Default presently exists other than the Designated Defaults; and (vi) no default or event of default under the First Lien Financing Documents presently exists other than the Designated First Lien Defaults.

8. **Costs and Expenses.** Each Note Party hereby ratifies and reaffirms its expense reimbursement obligations under Section [] of the Note Purchase Agreement.

9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Facsimile versions of signatures hereto shall be deemed original signatures, which hereby may be relied upon by all parties and shall be binding on the respective signor.

10. **Further Assurances.** Each Note Party covenants and agrees that it will at any time and from time to time do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, documents and instruments as may be reasonably required by the Second Lien Agent or the Purchasers to effectuate fully the intent of this Agreement.

11. **Continuation of the Note Purchase Agreement and the other Second Lien Financing Documents.** All terms and conditions of the Note Purchase Agreement and the other Second Lien Financing Documents remain in full force and effect. This Agreement is not a novation, nor is it to be construed as a release, waiver, extension of forbearance or modification of any of the terms, conditions, representations, warranties, covenants, rights or remedies set forth in the Note Purchase Agreement or any of the other Second Lien Financing Documents, except as expressly stated herein. This Agreement shall constitute a Second Lien Financing

Document.

12. **Severability.** If any term or provision of this Agreement or the application thereof to any party or circumstance shall be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected term or provision shall be modified to the minimum extent permitted by law so as to achieve most fully the intention of this Agreement.

13. **Captions.** The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

14. **Entire Agreement.** Except to the extent specifically set forth herein, the Second Lien Agent and the Purchasers reserve and preserve all rights and remedies under the Note Purchase Agreement, the other Second Lien Financing Documents and applicable law. This Agreement contains the entire agreement among the Second Lien Agent, the Purchasers and the Note Parties with respect to the Designated Defaults and with respect to the Second Lien Agent's and the Purchasers' agreement to forbear from exercising rights and remedies with respect to the Designated Defaults.

15. **Negotiation of Agreement.** Each Note Party acknowledges that (i) it has been represented by its own counsel in connection with the negotiation, preparation and execution of this Agreement and all other agreements, documents and instruments executed in connection herewith and therewith, and the transactions contemplated herein and therein, (ii) it has exercised independent judgment with respect to such negotiation, preparation and execution and transactions, (iii) it has not relied on any other party hereto or thereto (or counsel for such party) with respect to such agreements, documents and instruments and such transactions and (iv) any principal of contract construction that favors or disfavors the parties whose attorneys have drafted a contract, or provision thereof, shall not be applied to this Agreement or such other agreements, documents and instruments.

16. **Senior Debt.** The agreements and accommodations set forth herein are agreements and accommodations among the Note Parties on the one hand and the Second Lien Agent and the Purchasers on the other hand. Nothing set forth herein shall, or shall be deemed or construed to, limit, restrict, waive or otherwise modify any right, remedy or other action the Second Lien Agent or any Purchaser may possess, exercise, take or enforce against any Person other than the Note Parties, including, without limitation, the rights, remedies and other actions of and available to the Second Lien Agent or the Purchasers under the Intercreditor Agreement.

17. **GOVERNING LAW; SUBMISSION TO JURISDICTION.** THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH NOTE PARTY HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN NEW YORK AND IRREVOCABLY AGREES THAT, SUBJECT TO THE SECOND LIEN AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE

OTHER SECOND LIEN FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH NOTE PARTY EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH NOTE PARTY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PERSON BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED C/O COMPANY REPRESENTATIVE AT THE ADDRESS SET FORTH IN THE NOTE PURCHASE AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE 10 DAYS AFTER THE SAME HAS BEEN POSTED.

18. **WAIVER OF JURY TRIAL.** EACH NOTE PARTY, THE SECOND LIEN AGENT AND THE PURCHASERS HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE SECOND LIEN FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[Signature Page to Follow]

SAMPLE

FIRST AMENDMENT AND WAIVER

This FIRST AMENDMENT AND WAIVER (this “Amendment”), is dated as of _____, 2013, and refers to the _____ dated as of _____ (the “Credit Agreement”; capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Credit Agreement), among ABC Corporation and DEF Corporation (together, the “Borrowers”), GHI Corporation (“Holdings”) and certain subsidiaries of the Borrowers, as Guarantors, the Lenders from time to time parties thereto, and Bank, as Administrative Agent (“Administrative Agent”).

RECITALS

WHEREAS, Holdings and ABC have informed the Administrative Agent and each of the Lenders party hereto that Holdings and the Borrowers may not be able to _____, as required under Section ____ of the Credit Agreement, and, as a result, a Default and/or Event of Default under Section ____ of the Credit Agreement may occur if the Credit Agreement is not modified (the “First Event”);

WHEREAS, Holdings and ABC have informed the Administrative Agent and each of the Lenders party hereto that the audited combined balance sheet of the Borrowers and their consolidated Subsidiaries as at the end of the _____ fiscal year was incorrect and will be reissued to reflect a change to _____, which Holdings and ABC believe to be an immaterial change (the “Second Event” and, together with the First Event, the “Financial Reporting Events”); and

WHEREAS, upon the request of Holdings and the Borrowers, the Required Lenders have agreed, subject to the terms and conditions set forth herein, to amend the Credit Agreement to avoid and/or waive any Default and/or Event of Default related to the Financial Reporting Events as described more fully herein.

NOW, THEREFORE, in consideration of the foregoing, the terms, covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Amendments to Credit Agreement

(a) **Amendment to Section ____ (Defined Terms).** Section ____ of the Credit Agreement is hereby amended by adding the following definitions in proper alphabetical sequence:

“First Amendment” means that certain First Amendment and Waiver dated as of _____ among the Borrower, Holdings, the other Loan Parties, the Administrative Agent, and the Required Lenders.

“First Amendment Effective Date” means the date of satisfaction of the conditions referred to in Section 5 of the First Amendment.

[Signature Page]

(b) **Amendment to Section ____ (Financial Statements).** The first sentence of Section ____ of the Credit Agreement is hereby amended such that the words “Furnish to the Administrative Agent who in turn will promptly forward to each Lender:” are replaced with the words “Except as provided in Schedule ____, furnish to the Administrative Agent who in turn will promptly forward to each Lender.”:

(c) **Amendment to Section ____ (Reserved).** Section ____ of the Credit Agreement is hereby amended by amending and restating it in its entirety as follows:

____ Amendment and Extension of Credit Agreement. No later than the three month anniversary of the First Amendment Effective Date, execute and deliver, or cause to be executed and delivered an amendment of the Credit Agreement that extends the Revolving Termination Date to a date no earlier than _____ and which is otherwise reasonably satisfactory to the Administrative Agent together with any additional instruments, certificates, opinions or documents and take all such actions as the Administrative Agent may reasonably request for the purposes of implementing or effectuating the provisions of such amendment.

(d) **New Schedule ____.** A new Schedule ____, in the form annexed hereto, is hereby added to the Credit Agreement.

Section 2. Limited Waiver.

As of the Amendment Effective Date (as hereinafter defined), the Required Lenders hereby waive all defaults, if any, under Section ____ of the Credit Agreement related directly to (a) the First Event that is solely due to the potential failure to meet financial covenants and/or unresolved upcoming maturities in the Borrowers’ or Subsidiaries’ funded debt obligations and (b) to the Second Event, each as described herein until the expiration or termination of the Waiver Period. As used herein, the term “Waiver Period” shall mean the period beginning on the Amendment Effective Date (and ending on 11:59 p.m. New York City time on December 31, 2012).

Section 3. Limitation of Waiver.

Without limiting the generality of the provisions of Section ____ of the Credit Agreement, the waiver set forth above shall be limited precisely as written and shall relate solely to the waiver of the provisions of the Credit Agreement in the manner and to the extent described in Section 2 of this Amendment, and nothing in this Amendment shall be deemed to:

(a) constitute a waiver of (i) any Default or Event of Default other than the defaults, if any, related directly to the Financial Reporting Events as described herein or (ii) compliance by any Loan Party with respect to any other term, provision or condition of any Loan Document or any other instrument or agreement referred to therein; or

(b) prejudice any right or remedy that the Administrative Agent or the Lenders may have during the Waiver Period (except to the extent such right or remedy was based upon the Specified Defaults) or may have upon the expiration of the Waiver Period under or in

connection with the Credit Agreement or any other Loan Document or any other instrument or agreement referred to therein.

Section 4. General Release; Covenant Not to Sue.

(a) In consideration of, among other things, the Required Lenders' and the Administrative Agent's execution and delivery of this Amendment, Holdings and the Borrowers, each on behalf of itself and its agents, representatives, officers, directors, advisors, employees, subsidiaries, affiliates, successors and assigns (collectively, the "Releasors"), hereby forever waives, releases and discharges, to the fullest extent permitted by law, each Releasee (as hereinafter defined) from any and all liens, claims, interests and causes of action of any kind or nature (collectively, the "Claims") that such Releasor now has or hereafter may have against the Administrative Agent or any Lender party hereto in its capacity as such, and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys and other representatives of each of the foregoing, in their capacity as such (collectively, the "Releasees"), based on facts existing on or before the Amendment Effective Date that relate to: (i) any Loan Document, (ii) any transaction, action or omission contemplated thereby or (iii) any aspect of the dealings or relationships between or among any Releasor, on the one hand, and the Administrative Agent or any other Releasee, on the other hand, relating to any Loan Document or transaction, action or omission contemplated thereby. The provisions of this Section shall survive the termination of this Amendment, the Credit Agreement, any other Loan Document and payment in full of the Obligations.

(b) Holdings and each of the Borrowers unconditionally and irrevocably agrees that it will not sue any Releasee on the basis of any Claim released, remised and discharged by such Releasor pursuant to Section 2(a). If any Releasor violates the foregoing covenant, Holdings and each of the Borrowers, for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

Section 5. Conditions to Effectiveness.

This Amendment shall become effective as of the date hereof only upon the satisfaction of all of the following conditions precedent (the date of satisfaction of such conditions referred to herein as the "Amendment Effective Date"):

(a) Execution. The Administrative Agent shall have received a counterpart signature page of this Amendment duly executed by each of the Loan Parties and the Required Lenders.

(b) Fees. The Administrative Agent shall have received all reasonable other fees and other amounts due and payable on or prior to the Amendment Effective Date, including, to the extent invoiced prior to such date, reimbursement or other payment of all reasonable out-of-pocket expenses required to be reimbursed or paid by the Borrowers hereunder or any other Loan Document.

(c) Amendments. The Administrative Agent shall have received confirmation of (i) that certain Amendment to the Senior Notes Purchase Agreement, which shall be in full force and effect and shall be in form and substance reasonably satisfactory to the Required Lenders and (ii) that certain Amendment to the Securities Purchase Agreement, which shall be in full force and effect and shall be in form and substance reasonably satisfactory to the Required Lenders.

(d) Necessary Consents. Each Loan Party shall have obtained all material consents necessary or advisable in connection with the transactions contemplated by this Amendment.

(d) Other Documents. The Administrative Agent shall have received such other documents, information or agreements regarding the Loan Parties as the Administrative Agent may reasonably request.

Section 6. Representations, Warranties and Covenants.

To induce the Required Lenders and the Administrative Agent to execute and deliver this Amendment, Holdings and each of the Borrowers represents, warrants and covenants that:

(a) The individual executing this Amendment on behalf of Holdings and each of the Borrowers has the power and authority, and the legal right, to make, deliver and perform the Amendment and the Credit Agreement as amended by the Amendment (the “Amended Credit Agreement”) and the other Loan Documents to which it is party. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Amendment, the Amendment Agreement or any of the Loan Documents, except as the enforcement thereof may be subject to (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors’ rights generally and (ii) general principles of equity (regardless of whether such enforcement is sought in a proceeding in equity or at law).

(b) Except with respect to the Financial Reporting Events, each of the representations and warranties contained in the Credit Agreement and each other Loan Document is true and correct on and as of the date hereof as if made on the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date, and each of the agreements and covenants in the Credit Agreement and each other Loan Document is hereby reaffirmed with the same force and effect as if each were separately stated herein and made as of the date hereof.

(c) Neither the execution, delivery and performance of this Amendment nor the consummation of the transactions contemplated hereby does or shall contravene, result in a breach of, or violate (i) any provision of Holdings’ or any of the Borrowers’ certificate or articles of incorporation or formation, bylaws, operating agreement, limited partnership agreement or other governing documents, (ii) any law or regulation, or any order or decree of any court or government instrumentality, or (iii) any indenture, mortgage, deed of trust, lease, agreement or

other instrument to which Holdings or any of the Borrowers is a party or by which Holdings or any of the Borrowers or any of their respective property is bound.

(d) As of the date hereof and upon the effectiveness of this Amendment, no Default or Event of Default has occurred or is continuing under the Credit Agreement or any other Loan Document.

Section 7. Ratification of Liability. Holdings and each of the Borrowers hereby ratifies and reaffirms all of its payment and performance obligations and obligations to indemnify, contingent or otherwise, under this Amendment and each other Loan Document to which such party is a party, and each such party hereby ratifies and reaffirms its grant of Liens on, or security interests in, its properties pursuant to such Loan Documents to which it is a party as security for the Obligations, and confirms and agrees that such Liens and security interests hereafter secure all of the Obligations. Holdings and each of the Borrowers (a) acknowledges receipt of a copy of this Amendment and all other agreements, documents and instruments executed and/or delivered in connection herewith, (b) consents to the terms and conditions of same, and (c) agrees and acknowledges that, except as set forth herein, each of the Loan Documents remains in full force and effect and is hereby ratified and confirmed.

Section 8. Acknowledgement and Consent.

Each Guarantor hereby acknowledges that it has reviewed the terms and provisions of the Credit Agreement and this Amendment and consents to the waiver and amendment of the Credit Agreement effected pursuant to this Amendment. Each Guarantor hereby confirms that each Loan Document to which it is a party or otherwise bound and all Collateral encumbered thereby will continue to guarantee or secure, as the case may be, to the fullest extent possible in accordance with the Loan Documents the payment and performance of all “Obligations” under each of the Loan Documents to which is a party (in each case as such terms are defined in the applicable Loan Document).

Each Guarantor acknowledges and agrees that any of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Amendment. Each Guarantor represents and warrants that all representations and warranties contained in the Amended Agreement and the Loan Documents to which it is a party or otherwise bound are true and correct in all material respects on and as of the Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case they were true and correct in all material respects on and as of such earlier date.

Each Guarantor (other than Holdings) acknowledges and agrees that (i) notwithstanding the conditions to effectiveness set forth in this Amendment, such Guarantor is not required by the terms of the Credit Agreement or any other Loan Document to consent to the amendments and waivers of the Credit Agreement effected pursuant to this Amendment and (ii) nothing in the Credit Agreement, this Amendment or any other Loan Document shall be deemed to require the consent of such Guarantor to any future amendments or waivers to the Credit Agreement.

Section 9. Miscellaneous. Except as expressly provided in this Amendment, all of the terms and conditions of the Credit Agreement remain in full force and effect. Holdings and each of the Borrowers hereby reaffirms all obligations of such Loan Party under the Credit Agreement and each other Loan Document and acknowledge that this Amendment shall be a Loan Document for all purposes under the Amended Agreement. On and after the date hereof, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import, and each reference in the Notes to the Credit Agreement, shall mean and be a reference to the Credit Agreement as amended hereby, and this Amendment and the Credit Agreement shall be read together and construed as a single instrument. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts (including by facsimile or other electronic transmission), and all of said counterparts taken together shall be deemed to constitute one and the same document.

Section 10. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

[Signature Pages Follow]

_____, 2013

This restructuring support agreement (this “**Agreement**”) sets forth certain terms and conditions pursuant to which ABC Corporation, on behalf of itself and all of its direct and indirect subsidiaries (collectively, the “**Company**” and, together with Sponsor, LLC and its affiliates which directly or indirectly hold equity interests in the Company (collectively, “**Sponsor**”), the “**Company Parties**”) will propose a restructuring (the “**Restructuring**”) of the Company’s outstanding obligations under the Existing Revolver, the Existing First Lien Facility and the Existing Second Lien Facility (each as defined below), to be effectuated either (a) in an out-of-court transaction pursuant to the offering memorandum and consent solicitation statement relating to the Existing First Lien Facility and Existing Second Lien Facility or (b) pursuant to a joint “pre-packaged” chapter 11 plan of reorganization (the “**Pre-Packaged Chapter 11 Plan**”), in each case with the support of (x) FUND I, L.P. and its affiliates (“**Fund I**”), (y) FUND II, L.P., on behalf of certain holders for which it acts as investment advisor (“**Fund II**” and, together with DEF, the “**Initial Lenders**”) and (z) each additional Lender party to this Agreement (including any Joining Lender Party (as defined below)) (such Lenders, together with the Initial Lenders, the “**Lender Parties**”), in connection with (i) that certain Credit Agreement, dated as of _____, by and among ABC International (“**ABC**”), as Borrower, ABC Holding (“**ABC Holding**”), the several lenders from time to time party thereto (the “**First Lien Lenders**”), Bank I, as Administrative Agent and Collateral Agent (the “**First Lien Agent**”), Bank II, as Syndication Agent, and Bank III, as Documentation Agent (as amended, modified or supplemented through the date hereof and as otherwise permitted hereunder prior to the Closing Date (as defined below), the “**First Lien Credit Agreement**” and, together with related documents, as amended, modified or supplemented through the date hereof, and as otherwise permitted hereunder prior to the Closing Date, the “**Existing First Lien Facility**”), (ii) that certain Second Lien Credit Agreement, dated as of _____, among ABC, as Borrower, ABC Holding, the several lenders from time to time party thereto (the “**Second Lien Lenders**” and, together with the First Lien Lenders, the “**Lenders**”), Bank IV, as Administrative Agent and Collateral Agent (the “**Second Lien Agent**”), Bank V, as Syndication Agent, and Bank VI, as Documentation Agent (as amended, modified or supplemented through the date hereof and as otherwise permitted hereunder prior to the Closing Date, the “**Second Lien Credit Agreement**” and, together with related documents, as amended, modified, or supplemented through the date hereof, and as otherwise permitted hereunder prior to the Closing Date, the “**Existing Second Lien Facility**” and, together with the Existing First Lien Facility, the “**Credit Agreements**”) and (iii) that certain Revolving Credit Agreement, dated as of _____, among ABC, as U.S. Borrower, ABC Holding, certain foreign subsidiaries of ABC Holding from time to time party thereto, as Foreign Subsidiary Borrowers, the several lenders from time to time party thereto, Bank I, as Administrative Agent and Revolving Collateral Agent, Bank II, as Syndication Agent, Bank III, as Issuing Lender and Co-Documentation Agent, and Bank IV, as Co-Documentation Agent (as amended, supplemented, or modified from time to time, the “**Existing Revolver**”). All equity interests in ABC Investments (“**ABC Investments**”), the indirect parent of ABC, are held by ABC Ltd. (such interests, the “**Existing Equity**”). The Company Parties, each Initial Lender and each other Lender Party are collectively referred to as the “**Parties**” and individually as a “**Party**.” Claims of the Lenders under the Existing First Lien Facility are the “**First Lien Lender Claims**” and under the Existing Second Lien Facility are the “**Second Lien Lender Claims**” which, collectively with the First Lien Lender Claims, are the “**Lender Claims**”.

The Parties hereby agree as follows:

1. Proposed Restructuring.

(a) The principal terms of the Restructuring are set forth in the term sheet attached hereto as Exhibit A (which term sheet, and the terms defined therein, is expressly incorporated by reference herein and made a part of this Agreement as if fully set forth herein, and as may be amended in accordance with this Agreement, the “**Restructuring Term Sheet**”) and, to the extent applicable, in accordance with the term sheet attached as Exhibit B hereto (as such term sheet may be amended in accordance with the terms hereof, the “**Plan Term Sheet**”).

(b) The transactions described in the Restructuring Term Sheet will be implemented pursuant to various agreements and related documentation, including, but not limited to, (i) an offering memorandum and consent solicitation for the First Lien Exchange Offer, (ii) an offering memorandum for the Second Lien Exchange Offer, (iii) the First Lien Facility Amendment, a draft of which is attached hereto as Exhibit C, (iv) a loan agreement for the New Second Lien Facility, a draft of which is attached hereto as Exhibit D, a credit agreement for the New Revolver and the New Intercreditor Agreement, (v) forms and agreements evidencing the Rights Offering Transaction and the Backstop, a draft of which is attached hereto as Exhibit E (the “**Backstop Agreement**”), which shall be consistent with this Agreement and the Restructuring Term Sheet, (vi) mutual releases of claims for the Company Parties, Lenders and related persons and entities which shall be contained in the offering memorandum and consent solicitation materials set forth in clauses (i) and (ii) above, consistent with the language set forth in the Restructuring Term Sheet, (vii) such other definitive documentation (including, without limitation, security documents with respect to the Amended First Lien Facility, the New Second Lien Facility and the New Revolver, and various releases of liens and guarantees, other than with respect to the Amended First Lien Facility), all on substantially the same economic terms and otherwise in all material respects on the terms set forth in the Restructuring Term Sheet, and (viii) any organizational or governance documents for NewCo and its subsidiaries, which shall not, as of the Closing Date, grant any special rights to some minority stockholders of NewCo on account of shares they receive on the Closing Date that are not granted to all minority stockholders of NewCo on account of shares they receive on the Closing Date, and which shall provide for customary pre-emptive rights for NewCo stockholders who are “accredited investors” (as such term is defined in Rule 501 promulgated under the Securities Act), to the extent possible under applicable securities laws without causing NewCo to become subject to the reporting requirements of the U.S. Securities and Exchange Commission) in the event of any issuances by NewCo of common equity for cash (subsections (i)-(viii), collectively, the “**Transaction Documents**”). Each of the Transaction Documents shall be consistent with this Agreement and the Restructuring Term Sheet and shall otherwise be in form and substance acceptable to the Company and the Initial Lenders, provided that the Transaction Documents described in clauses (1)(b)(ii) and (v) shall be acceptable to the Company and Fund I only and the Transaction Documents described in clause (1)(b)(viii) shall be acceptable to Fund I only (except for (x) those documents in clause (viii) of any borrower, guarantor or pledgor in respect of the Amended First Lien Facility or the New Second Lien Facility (with respect to those provisions that may likely impact the effectiveness and enforceability of the loans and the security, pledge and similar rights thereunder) and (y) those sections of the documents in clause (viii) for which there are related

representations and warranties contained in the Amended First Lien Facility and/or New Second Lien Facility, which in both cases shall also be acceptable to Fund II). Each of the First Lien Facility Amendment, the loan agreement for the New Second Lien Facility, the New Intercreditor Agreement and the credit agreement for the New Revolver and any related loan and security documents related to each of the foregoing (the “**Lender Transaction Documents**”) shall be consistent with this Agreement and the Restructuring Term Sheet and shall otherwise be in form and substance acceptable to the management of the Company and each of the Initial Lenders. The Transaction Documents in the foregoing forms, with the foregoing required approvals or as otherwise modified pursuant to the terms of this Agreement are collectively referred to herein as the “**Approved Transaction Documents**” and the Restructuring contemplated by the Restructuring Term Sheet and the Approved Transaction Documents is referred to herein as the “**Qualified Out-of- Court Transaction**”).

(c) The obligations of Company Parties and the Lender Parties to consummate the Qualified Out-of-Court Transaction are conditioned upon the following to occur, which conditions may be waived by mutual agreement of the Initial Lenders and the Company, in each case in their sole discretion and except as provided below (the date on which each of the following conditions are satisfied or otherwise waived, the “**Closing Date**”):

(i) the Rights Offering Transaction and the Backstop have closed with consummation of the Exchange Offers in accordance with the Restructuring Term Sheet and the Backstop Agreement;

(ii) each of the Transaction Documents which by its terms is to be effective contemporaneously with or prior to consummation of the Exchange Offers shall be in full force and effect; provided that full force and efficacy of the terms of the Transaction Documents in clauses 1(b)(ii) and (v) are conditions for the Company and Fund I only and clause (viii) is a condition for Fund I only (except, to the extent Fund II has consent rights with respect to documents described in clause (viii), the full force and efficacy of such documents shall also be a condition for Fund II);

(iii) 100% of the Second Lien Lenders shall have (a) agreed to participate in the Second Lien Exchange Offer and validly and timely tendered and/or elected, and delivered the requisite tender and/or election (when solicited to do so and by the applicable deadline for doing so) for 100% of Second Lien Lender Claims in the Second Lien Exchange Offer and (b) not changed, revoked or withdrawn such agreement, tender and/or election;

(iv) 100% of the First Lien Lenders shall have (a) consented to the First Lien Facility Amendment (when solicited to do so and by the applicable deadline for doing so), (b) agreed to participate in the First Lien Exchange Offer and validly and timely tendered, and delivered the requisite tender (when solicited to do so and by the applicable deadline for doing so) with respect to \$__ million of the loans under the Existing First Lien Facility and (c) not changed, revoked or withdrawn such consent, or tender;

(v) immediately prior to consummation of the Restructuring, the Company shall have at least \$__ million (or \$__ million, as applicable) in Available Cash as set forth in the Restructuring Term Sheet under the heading “The Restructuring,” to be used for the Paydown or otherwise as provided in the Restructuring Term Sheet (this clause (v) being a condition for Fund I only);

(vi) prior to or contemporaneously with the Closing Date, the New Revolver shall be in full force and effect (this clause (vi) being a condition for the Initial Lenders only);

(vii) prior to or contemporaneously with the Closing Date, the Deferred Bonus Arrangements shall have been consummated (this clause (vii) being a condition for Fund I only);

(viii) in Fund I’s discretion, the size of the Rights Offering Transaction does not need to be greater than \$__ million or, if the Restructuring is effected through the Pre-Packaged Chapter 11 Plan, \$__ million (including the bridge loan contemplated by the Restructuring Term Sheet) in order to achieve the economic goals of the Restructuring in accordance with this Agreement (this clause (viii) being a condition for Fund I only);

(ix) by the Closing Date, to the extent necessary, any required approvals under the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (the “**HSR Act**”) shall have been obtained;

(x) The Company shall have paid the fees and expenses of the Initial Lenders as and to the extent required by Section 4(b)(i) below;

(xi) no court of competent jurisdiction or other competent governmental or regulatory authority has issued a final and non-appealable order making illegal or otherwise restricting, preventing or prohibiting the consummation of the transactions contemplated by this Agreement, the Restructuring Term Sheet or any of the definitive documentation contemplated hereby or thereby;

(xii) prior to or contemporaneously with the consummation of the Restructuring, the First Lien Lenders shall have received \$__ million in respect of the Paydown (this clause (xii) being a condition for the Initial Lenders only);

(xiii) prior to or contemporaneously with the consummation of the Restructuring, the releases described in the Restructuring Term Sheet under the heading “Releases,” as contemplated by clause 1(b)(vi) above, shall become effective;

(xiv) immediately after the consummation of the Restructuring, NewCo and its subsidiaries shall have at least \$__ million in Minimum Cash; and

(xv) this Agreement has not been terminated.

(d) If, within five (5) business days following the Solicitation Termination Date, unless extended by the Company and each of the Initial Lenders in writing, (1) the Closing Date has not occurred and (2) First Lien Lenders representing more than 50% in the aggregate number of First Lien Lenders and 66 2/3% of the aggregate principal amount outstanding under the Existing First Lien Facility and Second Lien Lenders representing more than 50% in the aggregate number of Second Lien Lenders and 66 2/3% of the aggregate principal amount outstanding under the Existing Second Lien Facility have each voted in favor of the Pre-Packaged Chapter 11 Plan (the “**Plan Approval**”), the Company will effectuate the Restructuring by commencing, in accordance with the terms of this Agreement, voluntary “pre-packaged” cases (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). In order to effectuate the Chapter 11 Cases, the Company shall solicit the First Lien Lenders and the Second Lien Lenders and holders of Existing Equity prior to the Commencement Date (as defined below) and in connection with the solicitations for the Qualified Out-of-Court Transaction for their approval of the Pre-Packaged Chapter 11 Plan (which shall be consistent with the Plan Term Sheet) and the related disclosure statement (the “**Disclosure Statement**”). Contemporaneously with the Commencement Date, the Company will file the Pre-Packaged Chapter 11 Plan and the Disclosure Statement. The Pre-Packaged Chapter 11 Plan and the related documents (the “**Plan Related Documents**”), shall include, but not be limited to, (a) the Disclosure Statement, (b) the materials related to the solicitation of votes for the Pre-Packaged Chapter 11 Plan pursuant to sections 1125, 1126 and 1145 of the Bankruptcy Code (the “**Solicitation**”), (c) any other documents or agreements required in connection with the Pre-Packaged Chapter 11 Plan and Disclosure Statement or the Chapter 11 Cases, including, but not limited to, (1) a proposed confirmation order approving the Pre-Packaged Chapter 11 Plan and Disclosure Statement (the “**Confirmation Order**”), (2) any appendices, amendments, modifications, supplements, exhibits and schedules relating to the Pre-Packaged Chapter 11 Plan or the Disclosure Statement, (3) the Backstop Agreement, (4) such other definitive documentation relating to a recapitalization of the Company as is necessary to consummate the Restructuring, all on the same economic terms and otherwise substantially on the terms set forth in the Pre-Packaged Chapter 11 Plan, (5) any motion (the “**Cash Collateral Motion**”) and proposed interim and final orders (as applicable, the “**Cash Collateral Order**”) relating to the use of cash collateral which Cash Collateral Order shall, at a minimum, provide the First Lien Lenders and Second Lien Lenders adequate protection for the use of their cash collateral (in accordance with the terms and conditions of the existing Intercreditor Agreement) and shall provide for the current payment of interest on the First Lien Term Loan Claims and no amortization payments on either the First Lien Term Loan Claims or the Second Lien Term Loan Claims or interest payments on the Second Lien Term Loan Claims unless otherwise agreed to by the Company and the Initial Lenders, (6) any organizational or governance documents for for NewCo and its subsidiaries, and (7) a motion to approve the Backstop Agreement (the “**Approval Motion**”). Each of the Plan Related Documents shall, (i) to the extent applicable, be consistent with the applicable form attached hereto, or (ii) if no applicable form exists, be in form and substance acceptable to the Company and the Initial Lenders; provided that the Plan Related Documents described in clauses (1)(d)(3), (6) and (7) shall be acceptable to the Company and Fund I only (except for (x) those documents in clause (6) of any borrower, guarantor or pledgor in respect of the Amended First Lien Facility or the New Second Lien Facility (with respect to those provisions that may likely impact the effectiveness and enforceability of the loans and the security, pledge and similar rights

thereunder) and (y) those sections of the documents in clause (6) for which there are related representations and warranties contained in the Amended First Lien Facility and/or New Second Lien Facility, which in both cases shall also be acceptable to Fund II). Each of the Plan Related Documents in the foregoing forms, with the foregoing required approvals or as otherwise modified in accordance with the terms hereof are collectively referred to herein as the “**Approved Plan Documents**” and the Restructuring contemplated by the Approved Plan Documents is referred to herein as the “**Approved Plan**”. For further clarity, notwithstanding anything to the contrary in this Agreement, (A) each of the documents attached to this Agreement as exhibits and (B) to the extent the Restructuring contemplates adoption of new organizational documents for the Company, organizational documents substantially similar to such current documents are in form and substance acceptable to the Company and the Initial Lenders; provided that further modifications may be permitted if satisfactory to the applicable parties as provided herein.

(e) Notwithstanding anything herein to the contrary, if, at any time before the Solicitation Termination Date, the Company determines (i) that the Qualified Out-of-Court Transaction will not be successfully consummated or (ii) to pursue the Chapter 11 Cases in lieu of a Qualified Out-of-Court Transaction, the Company may, subject to the consent of each of the Initial Lenders, commence the Chapter 11 Cases in the Bankruptcy Court.

2. Representations of the Initial Lenders and the Relevant Company Parties. Each of the Lender Parties, severally and not jointly, and each of ABC Ltd., ABC Investments, ABC International, the other Loan Parties under the Credit Agreements and Sponsor (the “**Relevant Company Parties**”), jointly and severally, hereby represent and warrant that, as of the Execution Date (as defined below), the following statements are true, correct and complete as of the date hereof:

(a) It has all requisite corporate, partnership, limited liability company or similar authority to execute this Agreement and carry out the transactions contemplated hereby and perform its obligations contemplated hereunder; and the execution and delivery of this Agreement and the performance of such Party’s obligations hereunder have been duly authorized by all necessary corporate, partnership, limited liability company or other similar action on its part.

(b) The execution, delivery and performance by such Party of this Agreement does not and shall not (i) violate (A) any provision of law, rule or regulation applicable to it or any of its subsidiaries or (B) its charter or bylaws (or other similar governing documents) or those of any of its subsidiaries or (ii) with respect to the Relevant Company Parties only, conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it or any of its subsidiaries is a party, except, in each case, for (A) matters as to which waivers or consents have been previously obtained, (B) matters relating to the Existing First Lien Facility, the Existing Second Lien Facility or the Existing Revolver that will be resolved as part of the Restructuring or (C) matters arising out of the filing of the Chapter 11 Cases.

(c) This Agreement is the legally valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or limiting creditors’ rights generally or by equitable principles relating to enforceability.

(d) The execution, delivery and performance by such Party of this Agreement does not and shall not require any material registration or material filing with, material consent or material approval of, or material notice to, or other material action to, with or by, any federal, state or other governmental authority or regulatory body, other than under the HSR Act or those which have been obtained.

(e) If such Party is a Lender, such Lender Party (i) either (A) is the sole legal and beneficial owner of the Lender Claims set forth below its name on the signature page hereof (or the Joinder (as defined below)), free and clear of all claims, liens and encumbrances, or (B) has sole investment and voting discretion with respect to such Lender Claims in respect to matters relating to the Restructuring contemplated by this Agreement and has the power and authority to bind the beneficial owner(s) of such Lender Claims to the terms of this Agreement and (ii) has full power and authority to act on behalf of, vote and consent to matters concerning such Lender Claims in respect to matters relating to the Restructuring contemplated by this Agreement and dispose of, exchange, assign and transfer such Lender Claims (with respect to a Lender Party, all Lender Claims under clauses (A) and (B) and any additional Lender Claims it owns or has such control over from time to time or acquires after the Execution Date, collectively, its “**Participating Lender Claims**”). Further, such Lender Party has made no prior assignment, sale, participation, grant, conveyance, or other transfer of, and has not entered into any other agreement to assign, sell, participate, grant, convey or otherwise transfer, in whole or in part, any portion of its right, title, or interests in such Lender Claims that are subject to this Agreement, the terms of which agreement are, as of the date hereof, inconsistent with the representations and warranties of such Lender Party herein or would render such Lender Party otherwise unable to comply with this Agreement and perform its obligations hereunder.

(f) If such party is a Lender, such Lender Party (i) has such knowledge and experience in financial and business matters of this type that it is capable of evaluating the merits and risks of entering into this Agreement and of making an informed investment decision, and has conducted an independent review and analysis of the business and affairs of the Company that it considers sufficient and reasonable for purposes of entering into this Agreement and (ii) is an “accredited investor” (as defined by Rule 501 of the Securities Act of 1933, as amended).

3. Agreements of the Lender Parties

(a) Subject to the terms and conditions hereof and except as the Company and the Initial Lenders may expressly release a Lender Party in writing from any of the following obligations, each Lender Party:

(i) hereby agrees (A) to participate in the Qualified Out-of-Court Transaction (including, in the case of Centerbridge, to complete the Rights Offering Transaction and the Backstop, subject to the terms and conditions of the Backstop Agreement), (B) if such Lender Party is a Second Lien Lender, to validly and timely participate (including by any early tender or election deadline set forth in any Approved Transaction Documents) in the Second Lien Exchange Offer with the full amount of its Second Lien Lender Claims, and not withdraw such Second Lien Lender Claims, (C) to complete, deliver and not withdraw the requisite consents and vote (when solicited to do so and by the applicable deadline for doing so) its Participating Lender Claims in favor of

the Approved Plan and (D) if such Lender Party is a First Lien Lender, to validly and timely deliver (and not withdraw) its consents to the First Lien Facility Amendment (when solicited to do so and by the applicable deadline for doing so) and to validly and timely participate (including by any early tender deadline set forth in the Approved Transaction Documents) in the First Lien Exchange Offer to the extent set forth in Restructuring Term Sheet, and not withdraw such First Lien Claims, provided that such consent, tender, agreement and vote may be revoked, terminated or withdrawn immediately upon the occurrence of a Support Termination Event;

(ii) shall not object to, or vote any of such Participating Lender Claims to reject or impede, a Qualified Out-of-Court Transaction or Approved Plan (including for the avoidance of doubt any Cash Collateral Motion in connection therewith), support directly or indirectly any such objection or impediment or otherwise take any action or commence any proceeding to oppose or to seek any modification of a Qualified Out-of-Court Transaction or Approved Plan (including for the avoidance of doubt any Cash Collateral Motion), to the extent applicable, or any Approved Transaction Documents or Approved Plan Documents, as applicable, prepared in connection with consummation of a Qualified Out-of-Court Transaction or pursuit or consummation of an Approved Plan;

(iii) hereby agrees (A) to use commercially reasonable efforts to (1) support and complete the Restructuring and all other actions contemplated in connection therewith and under the Approved Transaction Documents or Approved Plan Documents, as applicable, and (2) take any and all necessary and appropriate actions in furtherance of the Restructuring, the Approved Transaction Documents and the Approved Plan Documents, as applicable, and (B) to not take any actions inconsistent with this Agreement, the Approved Transaction Documents or the Approved Plan Documents; and

(iv) shall not, directly or indirectly, seek, solicit, negotiate, support or engage in any discussions relating to, or enter into any agreements relating to (i) any plan of reorganization, proposal, offer, dissolution, winding up, liquidation, reorganization, merger, consolidation, business combination, joint venture, partnership, sale of assets or restructuring of the Company, other than a Qualified Out-of-Court Transaction or Approved Plan or (ii) any other action that is inconsistent with, or that would delay or obstruct, a Qualified Out-of-Court Transaction or Approved Plan, nor shall the Lender Parties solicit or direct any person or entity to undertake any of the foregoing.

(v) hereby agrees that, to the extent such Lender Party is a party to any waiver with respect to the Existing Revolver, the Existing First Lien Facility or the Existing Second Lien Facility (collectively, “**Waivers**”) and for so long as this Agreement has not been terminated, such Lender Party will extend the termination date of the Waivers until the end of the five business day period set forth in Section 5(d)(ii)(A), and shall not terminate such Waivers with respect to such Lender Party on account of the passage of time until the end of such period.

The Parties agree that this Agreement does not constitute a commitment to, nor shall it obligate any of the Parties to, provide any new financing or credit support, other than as set forth herein and then only upon negotiation of definitive documentation with respect thereto.

(b)

(i) Each Lender Party agrees that, as long as this Agreement has not terminated in accordance with its terms, it shall not sell, transfer, assign or otherwise dispose of any Participating Lender Claims, or any option thereon or any right or interest (voting or otherwise) in any or all of its Participating Lender Claims (including, without limitation, any participation therein), except to a party that (A) is a Lender Party, provided that any Participating Lender Claims sold, transferred, assigned or otherwise disposed of to a Lender Party shall automatically be deemed to be subject to the terms of this Agreement, and provided further that any election to exchange or not to exchange Lender Claims made by the Lender Party transferor shall be binding upon the transferee or (B) executes and delivers a Joinder (as defined below) to the Initial Lenders and the Company Parties at least two (2) business days prior to the relevant transfer, in which case any such transferee shall be deemed to be a Lender Party for purposes of this Agreement, subject to clause (iv) below, the Company Parties shall be deemed to have acknowledged such transfer, and any election to exchange or not to exchange Loans made by the Lender Party transferor shall be binding upon the transferee.

(ii) If any Initial Lender sells, transfers, assigns or otherwise disposes of more than 50% in dollar value of the Participating Lender Claims held by such Initial Lender as of the Execution Date, such Initial Lender shall not have the consent or approval rights granted in this Agreement to the Initial Lenders generally or such Initial Lender specifically (in each case, in its capacity as a Lender Party) but shall continue to be bound by this Agreement.

(iii) This Agreement shall in no way be construed to preclude any Lender Party from acquiring additional Lender Claims; provided, that any such additional holdings shall automatically be deemed to be subject to all of the terms of this Agreement and each such Lender Party agrees that such additional Lender Claims shall be subject to this Agreement and shall be Participating Lender Claims hereunder. Each Lender Party agrees to provide to counsel for the Company and the Initial Lenders a notice of the acquisition of any additional Lender Claims within three (3) business days of the consummation of the transaction acquiring Lender Claims, in addition to any notices or other documents required under the Credit Agreements.

(iv) Any person that receives or acquires a portion of the Participating Lender Claims pursuant to a sale, assignment, transfer, hypothecation or other disposition of such Participating Lender Claims by a Lender Party hereby agrees to be bound by all of the terms of this Agreement (as the same may be hereafter amended, restated or otherwise modified from time to time) (a “**Joining Lender Party**”) by executing and delivering to counsel for the Company and counsel for the Initial Lenders a joinder in the form of Exhibit F hereto (the “**Joinder**”). The Joining Lender Party shall thereafter be deemed to be a “Lender Party” and a party for all purposes under this Agreement but in no event shall have the consent or approval rights of, nor shall be deemed, an Initial Lender. Each Joining Lender Party shall indicate, on the appropriate schedule annexed to its Joinder, the number and amount of Lender Claims held by such Joining Lender. With respect to

the Lender Claims held by the Joining Lender Party upon consummation of the sale, assignment, transfer, hypothecation or other disposition of such Participating Lender Claims, the Joining Lender Party hereby makes the representations and warranties of the Lender Parties set forth in Section 2 of this Agreement to the other Parties.

(v) Fund I hereby agrees to execute the Backstop Agreement no later than the commencement of the Exchange Offers.

4. Agreements, Representations and Warranties of the Company Parties

(a) Subject to the terms and conditions hereof and except as the Initial Lenders may expressly release the Company Parties in writing from any of the following obligations,

(i) The Company Parties hereby agree (A) to prepare or cause the preparation of the offering memorandum and consent solicitation and the Plan Related Documents, (B) to provide draft copies of the offering memorandum and consent solicitation and the Plan Related Documents to Counsel I LLP ("**Counsel I**") and Counsel II LLP ("**Counsel II**") within a reasonable amount of time prior to the launch of the Exchange Offers, solicitation of votes on an Approved Plan, commencement of the Chapter 11 Cases or the proposed execution date of any such documents, as applicable, (C) that they shall, except in an emergency where it is not reasonably practicable, provide draft copies of all motions, including "first day" motions, and applications and other documents the Company intends to file with the Bankruptcy Court to Counsel I and Counsel II as soon as reasonably practicable, but in no event less than two (2) business days before such documents are filed with the Bankruptcy Court, and shall consult in good faith with Counsel I and Counsel II regarding the form and substance of any such proposed filing (without limiting the approval rights of the Initial Lenders contained herein), (D) to execute the Backstop Agreement no later than the commencement of the Exchange Offers and (E) to complete, deliver and not withdraw the requisite consents and vote (when and to the extent solicited to do so and by the applicable deadline for doing so) all of their respective equity interests in favor of the Approved Plan as soon as practicable, but in any event within 5 business days after the commencement of the Exchange Offers, and, with respect to Sponsor, to cause the stockholders of ABC Ltd. to approve the Transactions, the Restructuring and the Approved Plan as soon as practicable, but in any event prior to the commencement of the Exchange Offers, to the extent such stockholder approval may be required by applicable law.

(ii) The Company Parties agree to (A) (1) support and complete the Restructuring and all other actions contemplated in connection therewith and under the Approved Transaction Documents and the Approved Plan Documents, (2) use commercially reasonable best efforts to take any and all necessary and appropriate actions in furtherance of the Restructuring, the Approved Transaction Documents and the Approved Plan Documents, and (3) seek, and use commercially reasonable best efforts to obtain, any and all required regulatory approvals and third-party approvals (including, if applicable, bankruptcy court approvals) for the Restructuring, and (B) not take any actions inconsistent with this Agreement, the Approved Transaction Documents or the Approved Plan Documents.

(iii) The Company Parties (A) shall cease and cause to be terminated any ongoing solicitation, discussions and negotiations with respect to any alternative proposal other than the Qualified Out-of-Court Transaction and the Approved Plan and (B) shall not, directly or indirectly, seek, solicit, negotiate, support, engage, initiate or participate in discussions relating to, or enter into any agreements relating to, any alternative proposal other than the Qualified Out-of-Court Transaction or the Approved Plan, nor shall the Company Parties solicit or direct any person or entity, including, without limitation, any member of the Company Parties' board of managers (or equivalent) or any holder of equity in the Company, to undertake any of the foregoing; provided that nothing herein shall limit the Company's ability to receive alternative proposals or take such other actions as are necessary to comply with its fiduciary duties which exist and cannot be waived under applicable law (provided that the Company Parties shall, within 1 business day of receipt or transmission, provide the Initial Lenders with any documents, proposals or summaries of communications to or from any persons or entities relating to any such discussions or negotiations).

(iv) Prior to the consummation of the Restructuring, the Company shall obtain customary D&O insurance coverage for current and former directors, officers, managers, employees and agents, and the Company shall purchase "tail" coverage for any such insurance that terminates, in each case on terms and conditions acceptable to Centerbridge.

(b) The Company shall pay all reasonable and documented fees and expenses of (i) the advisors to Fund I including Counsel I and Financial Advisor LLC ("**Financial Advisor I**") and one local Delaware counsel, and, Counsel II and one local Delaware counsel as legal advisors to Fund II, in each case, which are due and owing prior to the termination of this Agreement (and, for Financial Advisor I, in accordance with the terms of its engagement letter with the Company dated as of ____, 2013 (the "**Financial Advisor EL**")) and (ii) legal advisors to the First Lien Agent, Financial Advisor II as the financial advisor to the First Lien Agent (up to a total amount of \$1 million for Financial Advisor II), and legal advisors to the Second Lien Agent in accordance with the terms of the First Lien Credit Agreement and Second Lien Credit Agreement, respectively; with the accrued and the unpaid reasonable fees and expenses incurred by the advisors listed in (i) and (ii) to be paid, after receipt of applicable invoices, as soon as practicable after the launch of the Exchange Offers, but, in no event later than the earlier of (A) three business days following termination of this Agreement and (B) the Closing Date. In addition, no later than the earlier of (A) and (B) in the previous sentence the Company shall reimburse Fund I or its affiliates for its reasonable and documented fees and expenses incurred in connection with this Agreement or the transactions contemplated herein, or the Restructuring, not to exceed \$____. Substantially simultaneously with the execution of this Agreement, the Company will pay all such fees and expenses incurred and invoiced to date.

(c) If the Restructuring is pursued pursuant to the Chapter 11 Cases, the Company shall pay, subject to receipt of applicable invoices, all reasonable and documented fees and expenses of the advisors set forth in Section 4(b)(i) above in accordance with the terms of the Cash Collateral Order and this Agreement.

(d) If the Restructuring is pursued pursuant to the Chapter 11 Cases, the Company shall file and timely prosecute the Approval Motion (which shall be in form and substance acceptable to Fund I) seeking the entry of an order (the “**Approval Order**”) authorizing the Company to execute the Backstop Agreement and authorizing and approving the transactions contemplated therein, and authorizing the indemnification provisions set forth in the Backstop Agreement, which Approval Order shall be in full force and effect and shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of Fund I.

(e) The Company Parties confirm that, as of the Execution Date, the only obligations outstanding under the Existing Revolver consist of \$ ___ million in issued and undrawn letters of credit set forth on Schedule I to the Restructuring Term Sheet (the “**Letters of Credit**”), the Company shall not further utilize the Existing Revolver other than in connection with reimbursement obligations for any drawings on the Letters of Credit pursuant to the terms thereof and the Company shall not make any voluntary payments of principal under the Existing First Lien Facility or the Existing Second Lien Facility; provided, that if any payments of principal are made under the Existing First Lien Facility, the aggregate amount of such payments shall be deducted from the amount required for the Paydown on a dollar-for-dollar basis.

(f) There are no agreements, contracts, arrangements or understandings in place between, on the one hand, ABC International or any of its direct or indirect subsidiaries and, on the other hand, Sponsor, ABC Ltd., ABC Investments or any of their respective affiliates (in each case other than ABC International or any of its direct or indirect subsidiaries), other than (i) that certain Amended and Restated Consulting Agreement, dated as of ____, by and among ABC Ltd. and certain of its subsidiaries and Sponsor, (ii) arrangements related to the participation by the Company and Sponsor in certain pooled insurance programs, (iii) understandings whereby ABC pays certain operating expenses of ABC Ltd., ABC Investments and ABC International and (iv) that certain Amended and Restated Indemnification Agreement, dated as of ____, by and among ABC Ltd. and certain of its subsidiaries and Sponsor, and no additional agreements, contracts, arrangements or understandings will be put in place among such parties between the date hereof and the Closing Date.

(g) From the Execution Date until the Closing Date, each of ABC Ltd., ABC International and ABC Investments (i) will not make or declare any dividends, distributions or other payments on account of its equity (other than to fund expenses related to the liquidation of such entities as set forth in the Restructuring Term Sheet), (ii) will not make any payments to Sponsor or any of its affiliates (other than reimbursements to Sponsor for actual expenses incurred on behalf of the Company prior to the Closing Date up to an aggregate amount of \$20,000), (iii) will amend any agreements with Sponsor described in clause (f) above so that such agreements are terminated as of the Closing Date, and no amounts are owed from either party to the other after the Execution Date other than the expense reimbursement described above and (iv) will ensure that ABC Investments does not make any transfers (whether by dividend, distribution or otherwise) to any direct or indirect parent entity or shareholder of ABC Investments and that no subsidiaries of ABC Investments make any transfers (whether by dividend, distribution or otherwise) to any direct or indirect parent entity or shareholder of ABC Investments.

(h) From and after the Execution Date, the Company Parties will operate the business of the Company in the ordinary course and keep the Initial Lenders reasonably informed about the operations of the Company and provide the Initial Lenders such information regarding the operations of the Company or the Restructuring as may be reasonably requested; provided that the Company Parties will be permitted to (1) cash collateralize the Letters of Credit, (2) enter into such waivers (in addition to the Waivers) as may be required under the Existing Revolver, the Existing First Lien Facility and the Existing Second Lien Facility, provided that, subject to Section 3(a)(v), nothing herein shall be deemed to commit the Initial Lenders to grant or enter into any such additional waivers and (3) enter into agreements with respect to the sale of its North American Company Owned Dealerships, in the case of (1) with the consent of the Initial Lenders and in the case of (3) with the consent of Fund I.

(i) The Company Parties hereby represent and warrant that all assets of the business of the Company and its subsidiaries are owned or leased, as applicable, by ABC Investments and its subsidiaries, and that none of the Company Parties (other than ABC Investments and its subsidiaries) have any rights to any assets used in the business of the Company and its subsidiaries. If, after the Execution Date, it is discovered that the previous sentence was false in any respect, Sponsor and ABC Ltd. shall cause the relevant assets to be contributed, at no consideration, to ABC Investments or a designated subsidiary of ABC Investments.

(j) The Company hereby represents and warrants to the Initial Lenders that the offering memorandum/consent solicitation document will be true, complete and correct in all material respects and will not contain any 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.

5. Termination of Obligations. This Agreement shall terminate and, except as set forth in Section 17, all obligations of the parties hereto shall immediately terminate and be of no further force and effect upon the occurrence of any of the following events (each, a “**Support Termination Event**”),

(a) upon termination of this Agreement by the mutual written consent of the Company and each of the Initial Lenders, provided that notice of such termination is provided within one (1) business day to the persons and entities listed on Schedule 1 annexed hereto, in accordance with Section 14 hereof;

(b) upon the material breach by the Company Parties of any of the undertakings, representations, warranties or covenants of the Company Parties set forth in this Agreement, including the Company Parties’ obligations under Section 4, which breach remains uncured for a period of three (3) business days after the receipt of written notice of such breach from either Initial Lender unless waived by both Initial Lenders;

(c) upon the material breach by any of the Lender Parties of any of the undertakings, representations, warranties or covenants of the Lender Parties set forth in this Agreement, including the Lender Parties’ obligations under Section 3, which breach remains uncured for a period of three (3) business days after the receipt of written notice of such breach from the Company, Sponsor or any non-breaching Lender Party unless waived by the Company, Sponsor and each non-breaching Lender Party;

(d) upon the occurrence of any of the following, unless such Support Termination Event is waived or the applicable deadline is extended by the Company and each of the Initial Lenders in writing:

(i) at 5:00 P.M. prevailing Eastern Time on _____, unless the Company has commenced the Exchange Offers (the date that the Exchange Offers actually commence, the “**Solicitation Commencement Date**”);

(ii) if the Closing Date has not occurred by the date that is the earlier of (x) 10 business days after the Solicitation Commencement Date and (y) _____ (such earlier date being the “**Solicitation Termination Date**”), then:

(A) at 11:59 p.m. prevailing Eastern Time on the date that is five (5) business days after the Solicitation Termination Date unless the Plan Approval has been obtained and the Company shall have commenced the Chapter 11 Cases (the date that the Chapter 11 Cases are commenced is referred to herein as the “**Commencement Date**”);

(B) at 11:59 p.m. prevailing Eastern Time on the day that is three (3) business days after the Commencement Date, unless the Company has filed the Approved Plan and Disclosure Statement;

(C) at 11:59 p.m. prevailing Eastern Time on the day that is five (5) days after the Commencement Date, unless the Cash Collateral Order has been entered on an interim basis and at 11:59 p.m. prevailing Eastern Time on the day that is forty five (45) days after the Commencement Date, unless the Cash Collateral Order has been entered on a final basis;

(D) at 11:59 p.m. prevailing Eastern Time on the first business day that is ninety (90) calendar days after the Commencement Date, unless the Bankruptcy Court shall have entered the Confirmation Order, approving the Disclosure Statement and confirming the Approved Plan;

(E) at 11:59 p.m. prevailing Eastern Time on the first business day that is thirty (30) calendar days following entry by the Bankruptcy Court of the Confirmation Order if there has not occurred substantial consummation (as defined in section 1101 of the Bankruptcy Code) of the Approved Plan on or before such date;

(F) upon the filing by the Company Parties of any motion or other request for relief seeking to (1) dismiss any of the Chapter 11 Cases, (2) convert any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, or (3) appoint a trustee or an examiner with expanded powers pursuant to section 1104 of the Bankruptcy Code in any of the Chapter 11 Cases;

(G) upon the entry of an order by the Bankruptcy Court (1) dismissing any of the Chapter 11 Cases, (2) converting any of the Chapter 11

Cases to a case under chapter 7 of the Bankruptcy Code, (3) appointing a trustee or an examiner with expanded powers pursuant to section 1104 of the Bankruptcy Code in any of the Chapter 11 Cases, (4) terminating or shortening exclusivity under section 1121 of the Bankruptcy Code, (5) making a finding of fraud, dishonesty or misconduct by any executive, officer or director of the Company, regarding or relating to the Company or (6) vacating or modifying the Cash Collateral Order without the Initial Lenders' consent;

(H) upon the withdrawal, amendment or modification by the Company or any other Party of the Approved Plan or any of the Approved Plan Documents, or the filing of a pleading seeking to amend or modify the Approved Plan or any of the Approved Plan Documents, which withdrawal, amendment, modification or filing is materially inconsistent with the Approved Plan (with such amendments and modifications as have been effected in accordance with the terms hereof) or is adverse to the Initial Lenders, or, if the Company files any motion or pleading with the Bankruptcy Court that is not consistent in any material respect with this Agreement or the Approved Plan or any of the Approved Plan Documents (in each case with such amendments and modifications as have been effected in accordance with the terms hereof) and such motion or pleading has not been withdrawn prior to the earlier of (i) three (3) business days after the Company receives written notice from either of the Initial Lenders that such motion or pleading is inconsistent with this Agreement or the Approved Plan or the Approved Plan Documents, as applicable, and (ii) the entry of an order of the Bankruptcy Court approving such motion, provided that in all cases described in this subparagraph (H), any withdrawal, amendment, modification, filing, motion or pleading undertaken with the express consent of the Initial Lenders shall not give rise to a Support Termination Event;

(I) the Bankruptcy Court grants relief that is inconsistent with this Agreement or the Approved Plan in any material respect (in each case with such amendments and modifications as have been effected in accordance with the terms hereof);

(J) any of the Company Parties files, proposes or otherwise supports any plan of liquidation, asset sale of all or substantially all of the Company's assets or plan of reorganization other than the Approved Plan; or

(K) an order is entered by the Bankruptcy Court granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code authorizing any party to proceed against any material asset of the Company or that would materially and adversely affect the Company's ability to operate its businesses in the ordinary course.

(iii) the issuance by any governmental authority, or any other regulatory authority or court of competent jurisdiction, of any ruling or order enjoining the consummation of a material portion of the Restructuring;

(iv) the entry of an order by any court of competent jurisdiction invalidating, disallowing, subordinating, or limiting, in any respect, as applicable, the enforceability, priority, or validity of the claims and liens of the Lenders under the Existing First Lien Facility and claims and liens of the Lenders under the Existing Second Lien Facility, other than an order approving the transactions as contemplated by this Agreement and the Approved Plan or the filing of any motion by Company Parties that, if approved, would result in any of the foregoing;

(v) any material breach of, or any event of default under, the Existing Revolver, the Existing First Lien Facility or the Existing Second Lien Facility other than (X) the Specified Defaults (as defined in the Waivers) or (Y) any default resulting from the commencement of the Chapter 11 Cases;

(vi) an involuntary bankruptcy case against the Company is commenced or an involuntary petition is filed seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization or other relief in respect of the Company or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, administrative, receivership or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof) or if any court order grants the relief sought in such involuntary proceeding;

(vii) the Company taking any of the following actions: (A) voluntarily commencing any case or filing any petition seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, administrative receivership or similar law now or hereafter in effect except as provided for in this Agreement, (B) consenting to the institution of, or failing to contest in a timely and appropriate manner, any involuntary proceeding or petition described in subsection (vi) above, (C) applying for or consenting to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or for a substantial part of its assets, (D) filing an answer admitting the material allegations of a petition filed against it in any proceeding described in subsection (vi) above, (E) making a general assignment or arrangement for the benefit of creditors or (F) taking any corporate action for the purpose of authorizing any of the foregoing; or

(viii) termination of the Backstop Agreement.

Upon occurrence of a Support Termination Event, this Agreement shall forthwith become void and of no further force or effect, each Party hereto shall be released from its commitments, undertakings and agreements under or related to this Agreement and any of the Approved Transaction Documents and Approved Plan Documents, as applicable, and there shall be no liability or obligation on the part of any Party hereto; provided that in no event shall any such termination relieve a Party hereto from (i) liability for its breach or non-performance of its obligations hereunder prior to the date of such termination, notwithstanding any termination of this Agreement by any other Party, and (ii) obligations under this Agreement which expressly survive any such termination pursuant to Section 17 hereunder; and provided, further that,

notwithstanding anything to the contrary herein, any Support Termination Event may be waived in accordance with the procedures established by Section 9 hereof, in which case the Support Termination Event so waived shall be deemed not to have occurred, this Agreement shall be deemed to continue in full force and effect, and the rights and obligations of the Parties hereto shall be restored, subject to any modification set forth in such waiver. Upon termination of this Agreement, any and all consents, tenders, waivers, forbearances and votes delivered by a Lender Party prior to such termination (excluding the Waivers), shall be deemed, for all purposes, to be null and void from the first instance and shall not be considered or otherwise used in any manner by the Company. Upon the occurrence of a Support Termination Event under this Agreement, the fees and expense reimbursements required by Section 4(b) hereof shall be payable for work through the termination date, provided, that any applicable “tail” period in the Financial Advisor EL shall remain in full force and effect. For the avoidance of doubt, the automatic stay arising pursuant to Section 362 of the Bankruptcy Code in the event the Chapter 11 Cases are commenced shall be deemed waived or modified for purposes of providing notice or exercising rights hereunder.

6. Good Faith Cooperation; Further Assurances; Transaction Documents. The Parties shall, and the Company Parties shall, and shall cause each of their affiliates to, cooperate with each other in good faith and shall coordinate their activities (to the extent practicable) in respect of all matters concerning the implementation and consummation of the Restructuring. Furthermore, each of the Parties shall, and shall cause each of their affiliates to, take such action (including executing and delivering any other agreements and making and filing any required regulatory filings as may be reasonably necessary to carry out the purposes and intent of this Agreement). Each of the Company Parties and the Initial Lenders, as applicable, hereby covenants and agrees (a) to negotiate in good faith the Approved Transaction Documents, the Approved Plan and the Approved Plan Documents, each of which shall, except as otherwise provided for herein, (i) contain the same economic terms as, and other terms consistent in all material respects with, the terms set forth in the Term Sheet (as amended, supplemented or otherwise modified as provided herein) and any other documents attached as exhibits hereto, (ii) be in form and substance reasonably acceptable in all respects to the Parties (to the extent such Parties are specifically provided with consent rights over such documents pursuant to this Agreement), and (iii) be consistent with this Agreement, the Plan (to the extent applicable) and the Term Sheet in all material respects, and (b) to execute the Approved Transaction Documents, and, to the extent necessary, the Approved Plan Documents (in each case to the extent such Party is contemplated to be a party thereto).

7. Remedies. All remedies that are available at law or in equity, including specific performance and injunctive or other equitable relief, to any Party for a breach of this Agreement by another Party shall be available to the non-breaching Party (for the avoidance of doubt, if there is a breach of the Agreement by a Lender Party, money damages shall be an insufficient remedy to the other Lender Parties or the Company Parties and either the Company Parties or the Initial Lenders can seek specific performance as against another Lender Party); provided that in connection with any remedy asserted in connection with this Agreement, each Party agrees to waive any requirement for the securing or posting of a bond in connection with any remedy. All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such Party or any other Party.

8. Prior Negotiations and Entire Agreement. This Agreement, together with the Exhibits hereto, supersede all prior negotiations, and documents reflecting such prior negotiations, between and among the Company Parties and the Initial Lenders and the other Lender Parties (and their respective advisors) with respect to the subject matter hereof, and constitutes the entire agreement of the Parties with respect to the subject matter hereof, but shall not supersede the Approved Transaction Documents; provided that the Parties acknowledge and agree that any confidentiality agreements heretofore executed between the Company and any Initial Lender shall continue in full force and effect, as provided therein.

9. Amendments and Waivers. This Agreement, including the Exhibits hereto, may be amended only upon written approval of (i) the Company and (ii) each of the Initial Lenders. Any waiver of any condition, term or provision to this Agreement must be in writing signed by the Persons entitled to waive such condition, term or provision.

10. Independent Analysis. Each Lender Party and Company hereby confirms that it has made its own decision to execute this Agreement based upon its own independent assessment of documents and information available to it, as it has deemed appropriate.

11. Representation by Counsel. Each Party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of this Agreement against such Party based upon lack of legal counsel, shall have no application and is expressly waived.

12. Governing Law. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, without giving effect to the principles of conflict of laws that would require the application of the law of any other jurisdiction. By its execution and delivery of this Agreement, each of the Parties hereto hereby irrevocably and unconditionally agrees for itself that any legal action, suit or proceeding against it with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, may be brought in either a state or federal court of competent jurisdiction in the State and County of New York. By execution and delivery of this Agreement, each of the Parties hereto hereby irrevocably accepts and submits itself to the nonexclusive jurisdiction of each such court, generally and unconditionally, with respect to any such action, suit or proceeding. Notwithstanding the foregoing consent to jurisdiction in either a state or federal court of competent jurisdiction in the State and County of New York, upon the commencement of the Chapter 11 Cases, each of the Parties hereto hereby agrees that, if the petitions have been filed and the Chapter 11 Cases are pending, the Bankruptcy Court shall have exclusive jurisdiction over all matters arising out of or in connection with this Agreement. EACH PARTY HERETO UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO ABOVE.

13. Execution Date. This Agreement shall become effective, and each party hereto shall be bound to the terms of this Agreement, as of the date the Company Parties and each of the Initial Lenders have executed and delivered a signature page to this Agreement (the “**Execution Date**”).

14. Notices. All demands, notices, requests, consents and other communications under this Agreement shall be in writing, sent contemporaneously to all of the Initial Lenders and the Company

Parties, and deemed given when delivered, if delivered by hand, or upon confirmation of transmission, if delivered by email or facsimile, at the addresses and facsimile numbers set forth on Schedule 1 hereto.

15. Reservation of Rights. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair or restrict the ability of each Party to protect and preserve its rights, remedies and interests, including the Lender Claims and any other claims against the Company or other parties, or its full participation in any bankruptcy proceeding. Without limiting the foregoing sentence in any way, after a Support Termination Event, the Parties hereto each fully reserve any and all of their respective rights, remedies, claims and interests, subject to Section 5, in the case of any claim for breach of this Agreement. Furthermore, nothing in this Agreement shall be construed to prohibit any Party from appearing as a party-in-interest in any matter to be adjudicated in the Chapter 11 Cases, so long as, with respect to the Lender Parties and Sponsor, such appearance and the positions advocated in connection therewith are consistent with this Agreement and the Approved Plan and are not for the purpose of, and could not reasonably be expected to have the effect of, hindering, delaying or preventing the consummation of the Restructuring.

16. Rule of Interpretation. Notwithstanding anything contained herein to the contrary, it is the intent of the Parties that all references to votes or voting in this Agreement be interpreted to include (a) votes or voting on a plan of reorganization under the Bankruptcy Code and (b) all means of expressing agreement with, or rejection of, as the case may be, a restructuring or reorganization transaction that is not implemented under the Bankruptcy Code.

17. Survival. Notwithstanding (i) any sale of the Lender Claims in accordance with Section 3(b) or (ii) the termination of this Agreement in accordance with its terms, the agreements and obligations of the Parties in Sections 4(b) (solely to the extent of fees and expenses accrued before termination; provided that, any applicable “tail” period in the Financial Advisor EL shall remain in full force and effect), 8, 10, 11, 12, 15, 23, 24, 25 and 27 shall survive such sale and/or termination and shall continue in full force and effect for the benefit of the Initial Lenders and the Company in accordance with the terms hereof.

18. Successors and Assigns; Severability; Several Obligations. Subject to Section 3(c)(iii), this Agreement is intended to bind and inure to the benefit of the Parties and their respective permitted successors, assigns, heirs, executors, estates, administrators and representatives. The invalidity or unenforceability at any time of any provision hereof in any jurisdiction shall not affect or diminish in any way the continuing validity and enforceability of the remaining provisions hereof or the continuing validity and enforceability of such provision in any other jurisdiction. The agreements, representations and obligations of the Lender Parties under this Agreement are, in all respects, several and not joint.

19. Third-Party Beneficiary. This Agreement is intended for the benefit of the Parties hereto and no other person or entity shall be a third party beneficiary hereof or have any rights hereunder.

20. Counterparts; Additional Lender Parties. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same agreement. Execution copies of this Agreement may be delivered by facsimile, electronic mail or otherwise, each of which shall be deemed to be an original for the purposes of this paragraph. Any holder of Lender Claims that is not already an existing Lender Party hereto may execute the Joinder and, in doing so, shall become a Joining Lender Party and shall thereafter be deemed to be a

“Lender Party” and a party for all purposes under this Agreement but in no event shall have the consent or approval rights of, nor shall be deemed, an Initial Lender.

21. Reserved.

22. Headings. The section headings of this Agreement are for convenience of reference only and shall not, for any purpose, be deemed a part of this Agreement and shall not affect the interpretation of this Agreement.

23. Settlement Discussions. This Agreement is part of a proposed settlement of matters that could otherwise be the subject of litigation among the parties hereto. Nothing herein shall be deemed an admission of any kind. Pursuant to Federal Rule of Evidence 408, any applicable state rules of evidence and any other applicable law, foreign or domestic, this Agreement and all negotiations relating thereto shall not be admissible into evidence in any proceeding other than to prove the existence of this Agreement or in a proceeding to enforce the terms of this Agreement.

24. Publicity. The Company shall not (a) use the name of any Lender Party in any press release without such Lender Party’s prior written consent or (b) disclose to any person, other than legal, accounting, financial and other advisors to the Company, the principal amount or percentage of Lender Claims held by any Lender Party or any of its respective subsidiaries; provided that the Company shall be permitted to disclose at any time the aggregate principal amount of, and aggregate percentage of, any class of Lender Claims held by the Lender Parties as a group and by Existing First Lien Facility and Existing Second Lien Facility holders. Notwithstanding the foregoing, the Lender Parties hereby consent to the disclosure by the Company in the Approved Transaction Documents, the Approved Plan Documents, or the Pre-Packaged Chapter 11 Plan, as applicable, or in any motion or other bankruptcy court pleading seeking approval of any aspect of the Approved Plan, or as otherwise required by law or regulation, of the execution, terms and contents of this Agreement and the aggregate principal amount of, and aggregate percentage of, any class of Lender Claims held by the Lender Parties as a group including by indebtedness under the Existing First Lien Facility and the Existing Second Lien Facility. Notwithstanding the foregoing, the Company will submit to Counsel I and Counsel II all press releases, public filings, public announcements or other communications with any news media in each case to be made by the Company relating to this Agreement or the transactions contemplated hereby and any amendments thereof for prior approval by the Initial Lenders, which shall not be unreasonably delayed and which shall in any event be delivered to the Company within two (2) days of such submission. The Company will submit to the Initial Lenders in advance all formal communications with dealers, customers and employees relating to the transactions contemplated by this Agreement, and will take the Initial Lenders’ views with respect to such documents delivered within two (2) days of such submission into account. The Lender Parties will submit to counsel for the Company all press releases, public filings, public announcements or other communications with any news media relating to this Agreement or the transactions contemplated hereby and any amendments thereof for review and potential suggestions on the same basis as in Section 3(a)(iii) hereof. The Lender Parties shall not use the name of the Company in any press release without the Company’s prior written consent. Nothing contained herein shall be deemed to waive, amend or modify the terms of any confidentiality or non-disclosure agreement between the Company and any Lender Party, including the confidentiality and non-disclosure provisions contained in the Credit Agreements.

25. Fiduciary Duties. Notwithstanding anything to the contrary herein, nothing in this Agreement shall create any additional fiduciary obligations on the part of the Company Parties or any members, partners, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents and other representatives of the Company Parties or their affiliated entities, in such Person's capacity as a member, partner, manager, managing member, officer, director, employee, advisor, principal, attorney, professional, accountant, investment banker, consultant, agent or other representative of the Company Parties or their affiliated entities that such entities did not have prior to the execution of this Agreement. None of the Lender Parties shall have any fiduciary duties or other duties or responsibilities to each other, any Lender, the Company or any of the Company's creditors or other stakeholders.

26. No Solicitation. This Agreement, the Restructuring Term Sheet, the Plan Term Sheet and the transactions contemplated herein and therein are the product of negotiations among the Parties, together with their respective representatives. Notwithstanding anything herein to the contrary, this Agreement is not, and shall not be deemed to be, a solicitation of votes for the acceptance of the Plan or any plan of reorganization for the purposes of Sections 1125 and 1126 of the Bankruptcy Code or otherwise. The Company Parties will not solicit acceptances of the Plan from any Lender until such Lender has been provided with copies of a Disclosure Statement containing adequate information as required by Section 1125 of the Bankruptcy Code.

27. Indemnification. The Company shall indemnify, defend, and hold harmless each Initial Lender and each of such Initial Lender's affiliates, officers, directors, members, managers, partners, stockholders, employees, attorneys, advisors, agents, and other representatives and any affiliate of the foregoing, and each of their respective successors and permitted assigns (each, an "**Indemnified Party**") from and against, and shall promptly reimburse each Indemnified Party for, any and all losses, damages, liabilities, claims, costs, and expenses, including, interest, court costs, and reasonable attorneys' fees and expenses relating to, arising out of, resulting from or in connection with any action, suit, or proceeding by a third party arising out of or related to this Agreement or the Restructuring or other transactions contemplated hereby (collectively, "**Indemnified Liabilities**"); provided that nothing herein shall be deemed to obligate the Company to indemnify, defend or hold any Indemnified Party harmless of, from or against any losses, damages, liabilities, claims, costs, and expenses, including interest, court costs, attorneys' fees or expenses relating thereto, to the extent that they are finally judicially determined to have resulted from the unlawful acts, gross negligence or willful misconduct of such Indemnified Party. The indemnification rights provided pursuant to this Section 27 shall terminate in all respects on the Closing Date (or the effective date of an Approved Plan), and from and after such Closing Date or effective date no Indemnified Party shall have such indemnification rights hereunder, regardless of whether or not any Indemnified Liabilities have already arisen.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized officers, solely in their respective capacity as officers of the undersigned and not in any other capacity, as of the date first set forth above.

ABC LTD.

By: _____
Name: _____
Its: _____

SPONSOR, LLC

By: _____
Name: _____
Title: _____

Dated: _____

LENDER PARTY

Name of Institution: _____

By: _____

Name: _____

Title: _____

Telephone: _____

Facsimile: _____

First Lien Facility Claims

\$ _____

Second Lien Facility Claims

\$ _____

Dated: _____

LENDER PARTY

Name of Institution: _____

By: _____

Name: _____

Title: _____

Telephone: _____

Facsimile: _____

First Lien Facility Face Amount Holdings

\$ _____

€ _____

Second Lien Facility Face Amount Holdings

€ _____

SCHEDULE 1

NOTICE ADDRESSES

EXHIBIT A

RESTRUCTURING TERM SHEET

EXHIBIT B

PLAN TERM SHEET

EXHIBIT C

AMENDED FIRST LIEN FACILITY

EXHIBIT D

NEW SECOND LIEN CREDIT FACILITY

EXHIBIT E

BACKSTOP AGREEMENT

EXHIBIT F

JOINDER

The undersigned (“Transferee”) hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as of [_____] (the “Agreement”), by and among ABC Ltd. and its direct and indirect subsidiaries (the “Company”), SPONSOR, LLC, and the other holders of claims against the Company signatory thereto, and agrees to be bound by the terms and conditions thereof, and shall be deemed a “Joining Lender Party” under the terms of the Agreement. The Transferee hereby makes the representations and warranties of the Lender Parties (as defined in the Agreement) set forth in Section 2 of the Agreement to the other parties thereto. This joinder shall be governed by, and construed in accordance with, the internal laws of the State of New York, without giving effect to the principles of conflict of laws that would require the application of the law of any other jurisdiction.

Date Executed: _____

TRANSFEEEE

Name of Institution: _____

By: _____

Name: _____

Its: _____

Telephone: _____

Facsimile: _____

First Lien Facility Face Amount Holdings

\$ _____

€ _____

Second Lien Facility Face Amount Holdings

€ _____

EXHIBIT A
SAMPLE

ABC CORPORATION

Restructuring Term Sheet
Summary of Terms and Conditions

This restructuring term sheet (this “**Term Sheet**”) summarizing the principal terms of certain potential transactions concerning the Company (as defined below) and its subsidiaries is not legally binding or a complete list of all the terms and conditions of the potential transactions described herein. This Term Sheet and the restructuring support agreement to which this Term Sheet is attached (as amended, supplemented or otherwise modified from time to time, the “**Restructuring Support Agreement**”) shall not constitute an offer to sell or buy, nor the solicitation of an offer to sell or buy, any of the debt or securities referred to herein or the solicitation of acceptances of a chapter 11 plan. Any such future offer or solicitation shall only be made in compliance with all applicable laws (including the United States Bankruptcy Code, if necessary), will not be registered under the Securities Act of 1933, and will be made pursuant to an available exemption from registration thereunder (including, but not limited to, Section 4(2) and/or Regulation D). Without limiting the generality of the foregoing, this Term Sheet and the Restructuring Support Agreement and the undertakings contemplated herein and therein are subject in all respects to the negotiation, execution and delivery of definitive documentation as provided in the Restructuring Support Agreement. This Term Sheet is proffered in the nature of a settlement proposal in furtherance of settlement discussions and is entitled to protection from any use or disclosure to any party or person pursuant to Federal Rule of Evidence 408 and any other rule of similar import.

*THIS TERM SHEET AND THE RESTRUCTURING SUPPORT AGREEMENT ARE BEING PROVIDED AS PART OF A PROPOSED COMPREHENSIVE RESTRUCTURING TRANSACTION, EACH ELEMENT OF WHICH IS CONSIDERATION FOR THE OTHER ELEMENTS AND AN INTEGRAL ASPECT OF THE PROPOSED RESTRUCTURING OF THE DEBT AND EQUITY OF THE COMPANY (AS DEFINED BELOW). NOTHING IN THIS TERM SHEET OR THE RESTRUCTURING SUPPORT AGREEMENT SHALL CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, A STIPULATION OR A WAIVER, AND EACH STATEMENT CONTAINED HEREIN OR THEREIN IS MADE WITHOUT PREJUDICE, WITH A FULL RESERVATION OF ALL RIGHTS, REMEDIES, CLAIMS, OR DEFENSES OF FUND I, L.P. AND ITS MANAGED ENTITIES AND AFFILIATES (“**FUND I**”) AND FUND II, L.P. ON BEHALF OF CERTAIN HOLDERS FOR WHICH IT ACTS AS INVESTMENT ADVISOR (“**FUND II**” AND, TOGETHER WITH FUND I, THE “**INITIAL LENDERS**”) AND THE COMPANY.*

Company	ABC Investments, a [] company (“ ABC Investments ” and, together with its direct and indirect subsidiaries, the “ Company ”).
Summary	The outstanding indebtedness of, and equity interests in, the Company shall be restructured through out-of-court transactions with a pre-packaged chapter 11 plan of reorganization as a backstop alternative, if required, as set forth as an exhibit to the Restructuring Support Agreement (the “ Pre-Packaged Chapter 11 Plan ”), in each case, with terms consistent with those set forth in this Term Sheet or such exhibit.
Current Capital Structure	The current capital structure of the Company is as follows: (a) Indebtedness under the Credit Agreement, dated as of ____, among ABC Corporation (“ ABC ”), as Borrower, ABC Holding

EXHIBIT A
SAMPLE

	<p>(“ABC Holding”), the several lenders from time to time party thereto (the “First Lien Lenders”), Bank I, as Administrative Agent and Collateral Agent (the “First Lien Agent”), Bank II, as Syndication Agent, and Bank III, as Documentation Agent (as amended, supplemented, or modified from time to time, the “Existing First Lien Facility”), comprised of the Dollar Loans and the Euro Loans (collectively, the “First Lien Term Loans”). As of _____, the aggregate outstanding principal amount of the First Lien Term Loan was \$[] million and €[] million;</p> <p>(b) Indebtedness under the Second Lien Credit Agreement, dated as of _____, among ABC, as Borrower, ABC Holding, the several lenders from time to time party thereto (the “Second Lien Lenders”) and together with the First Lien Lenders, the “Lenders”), Bank IV, as Administrative Agent and Collateral Agent (the “Second Lien Agent”, and together with the First Lien Agent, the “Existing Agents”), Bank V, as Syndication Agent, and Bank VI, as Documentation Agent (as amended, supplemented, or modified from time to time, the “Existing Second Lien Facility”), comprised of the Euro term loan (the “Second Lien Term Loans”). As of _____, the aggregate outstanding principal amount of the Second Lien Term Loan was €[] million;</p> <p>(c) Indebtedness under the Revolving Credit Agreement, dated as of _____, among ABC, as U.S. Borrower, ABC Holding, certain foreign subsidiaries of ABC from time to time party thereto, as Foreign Subsidiary Borrowers, the several lenders from time to time party thereto, Bank I, as Administrative Agent and Revolving Collateral Agent, Bank II, as Syndication Agent, Bank III, as Issuing Lender and Co-Documentation Agent and Bank IV, as Co-Documentation Agent (as amended, supplemented, or modified from time to time, the “Existing Revolver”). As of _____, the only obligations outstanding under the Existing Revolver consist of \$[] million in issued and undrawn letters of credit as described on Schedule I (the “Letters of Credit”). The Company shall not further utilize the Existing Revolver other than in connection with reimbursement obligations for any drawings on the Letters of Credit pursuant to the terms thereof; and</p> <p>(d) Equity interests in ABC Investments, the indirect parent of ABC, which is wholly owned by ABC Ltd. (such interests, the “Existing Equity” and ABC Ltd. for this purpose, the “Existing Equity Holder”).</p>
The Restructuring	<p>The proposed restructuring contemplates a restructuring of substantially all of the Company’s outstanding indebtedness and equity. Such restructuring contemplates, among other things, (i) an exchange offer for the First Lien Term Loans into (A) term loans under the New Second Lien Facility (as defined below), (B) term</p>

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	<p>loans under the Amended First Lien Facility (as defined below), and (C) the Paydown (as defined below); (ii) an exchange offer for the Second Lien Term Loans into New Equity (as defined below) or cash and the ability for Second Lien Lenders to participate in a rights offering of New Equity, the proceeds of which shall be used, in part, for the Paydown, resulting in the equity ownership of NewCo (as defined below) and the Company being as described herein; (iii) an extension or refinancing of the Existing Revolver; and (iv) the Old Equity Distribution (as defined below) (such transactions described in the foregoing clauses (i) through (iv) and as otherwise required to implement the proposed restructuring, collectively, the “Restructuring”).</p> <p>The “Effective Date” shall be the date on which the Restructuring is substantially consummated or, if the Pre-Packaged Chapter 11 Plan is filed as provided in this Term Sheet, the effective date of the Pre-Packaged Chapter 11 Plan.</p> <p>The out-of-court Restructuring would be accomplished through:¹</p> <p>(i) (a) a par exchange offer (the “First Lien Exchange Offer”) for \$[] million of outstanding First Lien Term Loans into term loans under a new second lien facility in a principal amount of \$[] million with a stated maturity date of the [] anniversary of the Effective Date (the “New Second Lien Facility”); (b) a \$[] million repayment, to be applied first to all accrued but unpaid interest, and then to a portion of the outstanding principal amount under the Existing First Lien Facility (the “Paydown”) and (c) an amendment to the Existing First Lien Facility (the “First Lien Facility Amendment”) which amendment shall, among other things, include an extension of the stated maturity date of the Existing First Lien Facility to the five-and-one-half-year anniversary of the Effective Date and a conversion of the remaining obligations under the Existing First Lien Facility (after giving effect to the transactions contemplated by the foregoing clauses (a) and (b)) into \$[]² million of term loans (the “Amended First Lien Facility”). As a condition to an out-of-court Restructuring, 100% of the First Lien Lenders must accept the First Lien Exchange Offer and approve the First Lien Facility Amendment and execute the New Second Lien Facility.</p> <p>(ii) an exchange offer (the “Second Lien Exchange Offer”</p>
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¹ Liabilities with respect to any trade payables to remain outstanding and be satisfied in the ordinary course of business.

² Note: the \$[] million amount will be increased by the amount of accrued but unpaid interest included in the Paydown.

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	<p>and, together with the First Lien Exchange Offer, the “Exchange Offers”) for the outstanding Second Lien Term Loans for, at the election of each Second Lien Lender, either (A) its pro rata share of [] % of each of the common equity interests of NewCo (as defined below), subject to dilution from equity to be issued in connection with the Management Incentive Plan (as defined below) (collectively, the “New Equity”), or (B) \$[] for every \$1.00 of outstanding indebtedness under the Existing Second Lien Facility held by such Second Lien Lender. As a condition to the closing of an out-of-court Restructuring, 100% of the Second Lien Lenders must accept the Second Lien Exchange Offer. Fund I, in its capacity as a Second Lien Lender, will elect to receive New Equity in connection with the Second Lien Exchange Offer.</p> <p>(iii) a rights offering to the Second Lien Lenders to whom the Second Lien Exchange Offer is made, pro rata (the “Rights Offering Transaction”), for \$[]³ million equal to [] % of the New Equity (subject to dilution from New Equity to be issued in connection with the Management Incentive Plan), which Rights Offering Transaction shall be backstopped by Fund I (the “Backstop”). No fees shall be paid to Fund I in connection with the Rights Offering Transaction or the Backstop. The proceeds from the Rights Offering Transaction/Backstop, together with available cash of the Company, shall be used for (a) the Paydown, (b) cash required to be paid in the Second Lien Exchange Offer, (c) payment of fees and expenses in connection with the Restructuring, and/or (d) working capital and other general corporate purposes of the Company. Immediately prior to consummation of the Restructuring, the Company shall have at least \$[] million</p>
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³ Size of the Rights Offering Transaction is based on \$[] million in Available Cash and a \$[] million draw under the New Revolver for illustrative purposes only. In Fund I’s sole discretion, the aggregate size of the Rights Offering Transaction together with the Bridge Loan may be increased or decreased (but such that the aggregate size is not less than \$[] million, and the size of the Bridge Loan is not more than \$[] million) to the extent (on a dollar-for-dollar basis) the Available Cash decreases or increases, as applicable, or based on the amount of cash required to be paid in the second lien exchange offer and the final projected sources and uses, and may be increased up to a total of \$[] million plus any cash required to be paid in the Second Lien Exchange Offer, or up to a greater amount acceptable to Fund I. The pro forma ownership percentages set forth herein are based on a pro forma equity value of \$[] million and assume a pro forma net debt balance of \$[] million. Any increase or decrease in the net debt balance at close shall decrease or increase the assumed equity account on a dollar for dollar basis. Any change in the assumed equity account based on the net debt at close or any increase or decrease in the size of the Rights Offering Transactions shall result in a corresponding change in the pro forma ownership percentages (excluding the Old Equity Distribution, which shall not be adjusted so long as the size of the rights offering together with the Bridge Loan does not exceed the aggregate of \$[] million plus any cash required to be paid in the Second Lien Exchange Offer). If any Second Lien Lender chooses to receive cash in the Second Lien Exchange Offer, the equity percentage otherwise allocable to such Second Lien Lender in the Second Lien Exchange Offer shall be instead allocated on a pro rata basis to participants in the Rights Offering Transactions.

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	<p>(subject to the proviso below) of cash on its balance sheet (less cash posted in connection with the cash collateralization of the Letters of Credit (so long as such cash may be used in the Paydown) and any payments to advisors to the First Lien Lenders or the Second Lien Lenders made by the Company as required by the Restructuring Support Agreement) which shall not include (w) restricted cash, (x) \$[] million of Minimum Cash (without giving effect to any drawings under the New Revolver) and (y) Tax Increase Cash, to be used for the purposes set forth in the immediately preceding sentence (or such lower amount as may be acceptable to Fund I, “Available Cash”); provided that if the Restructuring is consummated after ____ but on or before ____, the \$[] million number set forth above shall instead be \$[] million (which \$[] million shall be inclusive of up to \$[] million which may be posted as collateral for the benefit of the lessor of the Company’s [] facility), notwithstanding any provision to the contrary herein. Immediately after the consummation of the Restructuring, the Company shall have at least \$[] million in Minimum Cash. A portion of the amount otherwise to be raised in the Rights Offering Transaction may be structured as an unsecured bridge loan in an amount not to exceed \$[] million from the current Second Lien Lenders that elected to participate in the Rights Offering Transaction (and included in the Backstop), to be repaid solely with the return of cash collateral anticipated to be posted to the lessor of the Company’s [] facility and the net proceeds from the sales of Company-owned [] after the Effective Date, and junior in payment and priority only to the New Revolver, the Amended First Lien Facility and the New Second Lien Facility (the “Bridge Loan”). The size of the Rights Offering Transaction shall be reduced by the amount of the Bridge Loan on a dollar-for-dollar basis.</p> <p>“Minimum Cash” means Unrestricted Cash (as defined in the Amended First Lien Facility), which Unrestricted Cash is or may be utilized for general corporate purposes and shall not be subject to any liens (other than the liens in favor of the lenders under the New Revolver, the Amended First Lien Facility and the New Second Lien Facility), and which, for the avoidance of doubt, may include the proceeds of drawings under the New Revolver made at Closing solely to the extent permitted under the heading “New Revolver”, and such Minimum Cash amount may only be reduced with the prior consent of each of the Initial Lenders.</p> <p>“Tax Increase Cash” means the amount of any increase in federal, state and local corporate income or franchise taxes that could not have been reasonably expected to be imposed on NewCo or its subsidiaries but for transactions contemplated by the Restructuring, as opposed to</p>
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	<p>Fund I's expectation on the date of execution of the Restructuring Support Agreement based on information provided by the Company.</p> <p>(iv) (a) prior to the closing of the Restructuring, formation by the Existing Equity Holder of [NewCo], a Cayman Islands limited company ("NewCo"), and (b) at or prior to the closing of the Restructuring, transfer of the Existing Equity by the Existing Equity Holder to NewCo (subject to the liens of the lenders under the existing credit facilities until such liens are replaced by the new credit facilities) and, on the Effective Date, issuance of additional equity in NewCo as set forth herein such that the Existing Equity Holder's ownership interest in NewCo shall be []% of the New Equity (subject to further dilution from equity to be issued in connection with the Management Incentive Plan). In addition, the Existing Equity Holder shall receive \$[] in cash from NewCo representing the value of []% of New Equity (together with the []% of the New Equity, the "Old Equity Distribution"), and at the closing the equity ownership of NewCo shall be as set forth herein.⁴</p> <p>(v) either (a) a reduction of the commitment amount under the Existing Revolver and an extension of the maturity date thereunder or (b) the replacement of the Existing Revolver with a new revolving credit facility from third party lenders, in either case, in an amount of \$[] million (or such amount otherwise acceptable to the Initial Lenders and the management of the Company), and on terms acceptable to the Initial Lenders and the management of the Company, with the Initial Lenders and the management of the Company acknowledging that such revolver may be structured on a 'first out' basis (whether resulting from reduction and extension or replacement, the "New Revolver").</p> <p>(vi) the execution by the Company and holders of indebtedness under the New Revolver, the holders of indebtedness under the Amended First Lien Facility and the holders of indebtedness under the New Second Lien Facility (or the agents therefor) of a customary intercreditor agreement acceptable to the Initial Lenders (the "New Intercreditor Agreement").</p>
Amended First Lien Facility	<i>Description:</i> Subject to the Paydown and the conversion of \$[] million of First Lien Loans into loans under the New Second Lien

⁴ The portion of the Old Equity Distribution to be paid in cash is the "**Cash Distribution**", and the Existing Equity Holder's remaining holdings of NewCo common stock is the "**NewCo Share Distribution**". The Existing Equity Holder shall distribute or pay (i) the Cash Distribution *pro rata* to the holders of DSUs and (ii) the NewCo Share Distribution *pro rata* to the remaining equity holders of ABC Ltd., in each case, in liquidation of their interests in ABC Ltd.

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	<p>Facility, the Existing First Lien Facility shall be restructured into term loans with an aggregate amount outstanding on the Effective Date of \$[]⁵ million, with a term of [] years and an interest rate of Libor (with a 150 bps Libor floor) plus []% per annum.</p> <p><i>Guarantees and Collateral:</i> The guarantors and collateral package, as well as all other terms, shall be consistent with the draft Amended First Lien Facility attached to the Restructuring Support Agreement with any further modifications acceptable to the Initial Lenders and the management of the Company.</p> <p>Promptly after completion of audited financial statements for fiscal year [], NewCo shall seek and obtain ratings for the indebtedness outstanding under the Amended First Lien Facility from Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Financial Services LLC ("S&P").</p>
New Second Lien Facility	<p><i>Description:</i> The \$[] million total indebtedness outstanding under the New Second Lien Facility shall have a []-year term and shall bear interest at the rate of Libor (with a 150 bps Libor floor) plus []% per annum.</p> <p><i>Guarantees and Collateral:</i> The guarantors and collateral package, as well as all other terms, shall be consistent with the draft New Second Lien Facility attached to the Restructuring Support Agreement with any further modifications acceptable to the Initial Lenders and the management of the Company.</p> <p>Promptly after completion of audited financial statements for fiscal year [], NewCo shall seek and obtain ratings for the indebtedness outstanding under the New Second Lien Facility from Moody's and S&P.</p>
New Revolver	<p><i>Description:</i> A revolving credit facility of \$[] million (or such amount otherwise acceptable to the Initial Lenders) which shall have a []-year term and shall bear interest at a rate reasonably acceptable to the Initial Lenders.</p> <p>The New Revolver shall otherwise be on terms acceptable to the Initial Lenders, it being understood that the guarantors and collateral package under the Existing Revolver are acceptable to the Initial Lenders and the management of the Company.</p> <p>If the Closing occurs on or before ____, not more than \$[] million of revolving loans may be drawn under the New Revolver at Closing, and if the Closing occurs after ____ and on or before ____, not more than \$[] million of revolving loans may be drawn under the New Revolver at Closing, in each case which may be used for the Paydown</p>

⁵ The \$[] million amount shall be increased by the amount of accrued but unpaid interest included in the Paydown.

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	but shall not be considered part of Available Cash, with such limitations not giving effect to the replacement or backstopping of the Letters of Credit by letters of credit issued under the New Revolver on the Closing Date, which shall be permitted.
Deferred Bonus Agreements	<p>At the consummation of the Restructuring (i) with respect to current employees of the Company, such employees shall receive, in full satisfaction of all of such employees' rights arising under the Special Bonus Plan adopted by the Board of Directors of ABC Ltd. on ____ (the "<i>Special Bonus Plan</i>"), the vested amounts due to them under the Special Bonus Plan net of withholding, []% of which net-of-withholding amount shall be granted in the form of New Equity on the same valuation as the rights offering (i.e. for a total amount of []% of the New Equity), subject to call rights and other standard restrictions to be set forth in NewCo's governance documents (e.g. drag rights and transfer restrictions) approved by Fund I and []% of which net-of-withholding amount shall be in cash and (ii) with respect to former employees of the Company (including for this purpose the Company's CEO), such employees shall have the election of receiving, in full satisfaction of all of such former employees' rights arising under the Special Bonus Plan, either (A) []% of such amounts in cash or (B) (x) []% of the amounts due to such employees in cash, and (y) []% of the amounts due to such employees in the form of their pro rata share (such pro rata share to be transferable) of an unsecured []-year junior subordinated note with a []% cash coupon and a face value of \$[] million <u>less</u> []% of the pre-tax amount paid pursuant to clause (A) above, junior in payment and priority to the New Revolver, the Amended First Lien Facility, the New Second Lien Facility and the Bridge Loan. The foregoing shall not affect the payment timing with respect to the vested deferred amounts.</p> <p>It is the intent of the foregoing that it shall not result in a violation of Section 409A of the Internal Revenue Code of 1986, as amended, but neither NewCo nor the Company shall be liable to any current or former employee in the event of such violation.</p> <p>All withholding taxes relating to the cash referred to in clause (ii) above will be netted by NewCo against the cash to be otherwise distributed.</p> <p>All withholding taxes relating to the junior subordinated note referred to in clause (ii) above will be paid on a "net settlement" basis by being deducted from the amount of the note to be issued.</p> <p>The transactions contemplated by the above are the "<i>Deferred Bonus Arrangements</i>".</p>
Chapter 11 Cases	If filing of the Pre-Packaged Chapter 11 Plan becomes necessary, and the conditions precedent set forth in the Restructuring Support Agreement have been satisfied (including the receipt of the Plan

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	Approval, as defined in the Restructuring Support Agreement)), the Company and its subsidiaries set forth on Exhibit A (collectively, the “ Debtors ” and, after the Effective Date, the “ Reorganized Debtors ”) shall file voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “ Bankruptcy Code ”) commencing chapter 11 cases (the “ Chapter 11 Cases ”) in the United States Bankruptcy Court for the District of Delaware (the “ Bankruptcy Court ”). The Pre-Packaged Chapter 11 Plan and the related disclosure statement (the “ Disclosure Statement ”) shall be filed substantially contemporaneously with the filing of the Chapter 11 Cases (the “ Petition Date ”). The Pre-Packaged Chapter 11 Plan shall be in all material respects consistent with this Term Sheet, the Restructuring Support Agreement and otherwise in form and substance satisfactory to the Initial Lenders.
Implementation of Restructuring and Definitive Documentation	The Company shall, in good faith, negotiate and prepare definitive documentation concerning the Restructuring that is consistent with the terms described in this Term Sheet and any related documentation, including, without limitation, the Restructuring Support Agreement, the Pre-Packaged Chapter 11 Plan and Disclosure Statement, all post-Effective Date corporate organization and governance documents, and all other documents necessary to effectuate the Restructuring, all of which shall be in form and substance satisfactory to the Initial Lenders, in each case to the extent required by the Restructuring Support Agreement.
Motions and Other Bankruptcy Court Filings	If filing the Chapter 11 Cases is necessary, all motions and other filings with the Bankruptcy Court, including any proposed orders, including, without limitation, the order confirming the Pre-Packaged Chapter 11 Plan (the “ Confirmation Order ”), shall be in form and substance acceptable to the Initial Lenders, in each case to the extent required by the Restructuring Support Agreement.
Tax/Business Considerations	The parties to the Restructuring Support Agreement shall use good faith efforts to structure the Restructuring and the transactions contemplated herein and in the Restructuring Support Agreement to the maximum extent possible in a tax-efficient and cost-effective manner for the Company, NewCo, the Existing Equity Holder, the recipients of the Old Equity Distribution, the Initial Lenders and any New Equity holders.
Board Members/Corporate Governance	Upon the consummation of the Restructuring, organizational or governance documents for NewCo and its subsidiaries shall be adopted, which shall not, as of the Closing Date, grant any special rights to some minority stockholders of NewCo on account of shares they receive on the Closing Date that are not granted to all minority stockholders of NewCo on account of shares they receive on the Closing Date, and which shall provide for customary pre-emptive rights for NewCo stockholders who are “accredited investors” (as such term is defined in Rule 501 promulgated under the Securities Act), to the extent possible under applicable securities laws without

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	requiring a registration statement to be filed with respect to NewCo, in the event of any issuances by NewCo of common equity for cash, and in each case acceptable to Fund I (and, for (x) the foregoing documents for any borrower, guarantor or pledgor in respect of the Amended First Lien Facility or the New Second Lien Facility (with respect to those provisions that may likely impact the effectiveness and enforceability of the loans and the security, pledge and similar rights thereunder) and (y) those sections of the foregoing documents for which there are related representations and warranties contained in the Amended First Lien Facility and/or New Second Lien Facility, acceptable to Fund II). The Board of Directors of NewCo shall initially have 7 members, all appointed by Fund I.
Management Incentive Plan	Fund I and the Company shall work in good faith to negotiate a management incentive plan (taking into account tax implications) for NewCo (the “ <i>Management Incentive Plan</i> ”), which shall provide for grants of options and/or restricted units/equity reserved for management, directors, and employees for up to (at Fund I’s option) []% of the New Equity. The amount, form, exercise price, allocation and vesting of such equity-based awards, and any limitations thereon, shall be determined and approved by Fund I, and the terms of the Management Incentive Plan shall be designed to ensure that NewCo does not become subject to the reporting requirements of the U.S. Securities and Exchange Commission.
Conditions Precedent to Closing	The occurrence of the Effective Date shall be subject to the satisfaction of conditions precedent as set forth in the Restructuring Support Agreement.
Releases	<p>To the fullest extent permitted by applicable law, the Restructuring shall include a full release from liability, in form consistent with the form Release and Indemnification attached to the Restructuring Support Agreement in favor of the Company, the Existing Equity Holder, the Lenders, and all current and former direct and indirect equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives) by the Company, the Existing Equity Holder and the Lenders from any claims and causes of action related to or arising on or prior to the Effective Date, except for any claims and causes of action for fraud, gross negligence or willful misconduct.</p> <p>In connection with the Exchange Offers and the Rights Offering Transaction (i) Fund I shall provide a “big-boy” release in favor of the Company, the Existing Equity Holder, and all current and former direct and indirect equityholders, members, partners, subsidiaries,</p>

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	<p>affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives) in connection with the offering of securities of NewCo in the Restructuring, other than in connection with such persons' gross negligence, willful misconduct or fraud, and (ii) NewCo shall indemnify, defend and hold harmless each "controlling person" of NewCo as such term is defined in the Securities Act of 1933 and the Securities Exchange Act of 1934 (together, the "<i>Securities Laws</i>"), and all current and former direct and indirect equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives of any such controlling person, and each of their respective successors and permitted assigns (each, an "<i>Indemnified Securities Party</i>") from and against, and shall promptly reimburse each Indemnified Securities Party for, any and all losses, damages, liabilities, claims, costs, and expenses, including, interest, court costs, and reasonable attorneys' fees and expenses relating to, arising out of, resulting from or in connection with any action, suit, or proceeding by a third party arising out of or related to the Securities Laws based on the offering of securities of NewCo in the Restructuring.</p>
Other Terms	<ul style="list-style-type: none"> • Forbearance/waiver by the lenders under the Existing Revolver, the First Lien Lenders and the Second Lien Lenders through the effectiveness of the Restructuring, solely to the extent provided in the Restructuring Support Agreement. • Purchase by the Company of customary tail D&O insurance for current and former directors, officers, managers, employees and agents, on terms and conditions acceptable to Fund I. • Payment by the Company of the reasonable and documented fees and expenses of (a) the advisors to Fund I (including legal, accounting, financial and other advisors), (b) the legal advisors to Fund II and (c) the legal advisors to the First Lien Agent Financial Advisor as the financial advisor to the First Lien Agent (up to a total amount of \$[] million for Financial Advisor), and legal advisors to the Second Lien Agent in accordance with the terms of the First Lien Credit Agreement and Second Lien Credit Agreement, respectively, in each case in accordance with the terms of the Restructuring Support Agreement. In addition, the Company shall reimburse Fund I or its affiliates for its reasonable and documented fees and expenses incurred in connection with the Restructuring Support Agreement or the transactions contemplated

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	therein, or the Restructuring, not to exceed \$[].
Governing Law and Forum	The law governing this Term Sheet, the Restructuring Support Agreement and other Restructuring transactions (other than the governing documents of entities formed outside New York) shall be that of New York and, to the extent applicable, the United States Bankruptcy Code. The Restructuring Support Agreement shall include consent to exclusive New York jurisdiction.

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SCHEDULE I

LETTERS OF CREDIT

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EXHIBIT A

DEBTORS

**EXHIBIT B
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Expense Claims**

On or as soon as practicable after the Effective Date, each holder of an Allowed² Administrative Expense Claim (including Allowed claims described in section 503(b)(9) of the Bankruptcy Code) shall (i) receive cash equal to the full Allowed amount of its claim, (ii) be paid in the ordinary course of business, or (iii) receive such other less favorable terms as may otherwise be agreed to by such holder and the Debtors, with the consent of Fund I.

On the Effective Date, the claims for the reasonable fees and expenses of the advisors for Fund I and legal advisors for Fund II shall be Allowed and paid in full, in cash, without any requirement for the filing of fee or retention applications in the Chapter 11 Cases.

Priority Tax Claims

On or as soon as practicable after the Effective Date, each holder of an Allowed Priority Tax Claim shall be treated in accordance with Bankruptcy Code section 1129(a)(9)(C).

B. Classified Claims and Interests**Priority Non-Tax
Claims**

On or as soon as practicable after the Effective Date, each holder of an Allowed Priority Non-Tax Claim shall receive cash equal to the full Allowed amount of its claim or otherwise be left unimpaired, or receive such lesser treatment as may otherwise be agreed to by such holder and the Debtors, with the consent of Fund I.

Revolver Claims

To the extent that any Revolver Claims or claims under the Letters of Credit exist, on or as soon as practicable after the Effective Date, all such claims shall be Allowed as of the Effective Date, and if not paid previously, shall be refinanced in full by the New Revolver. **Unimpaired.**

**First Lien Lender
Claims**

The First Lien Lender Claims shall be Allowed in an aggregate principal amount of approximately \$[] million and €[] million, plus accrued interest as of the Effective Date, which such interest shall be paid in full, in cash, at the non-default rate on the Effective Date to the extent not previously paid, plus such reasonable costs, fees and expenses of the First Lien Agent as provided under the Existing First Lien Facility which shall be paid in full, in cash on the Effective Date.

On the Effective Date, holders of Allowed First Lien Lender Claims shall, in satisfaction of their claims (x) exchange \$[] million of outstanding principal indebtedness under the Existing First Lien Facility for their pro rata share of the New Second Lien Facility, (y) receive their pro rata share of \$[] million in

¹ Terms capitalized but not defined herein shall have the meanings assigned to such terms in the Restructuring Support Agreement or the Restructuring Term Sheet. The entities proposed to be Debtors shall be as set forth on Exhibit A.

² “**Allowed**” shall mean any claim that is determined to be an allowed claim in the Chapter 11 Cases in accordance with sections 502 and/or 506 of the Bankruptcy Code.

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cash and (z) exchange any remaining portion of Allowed First Lien Lender Claims (after giving effect to (x) and (y)) for \$[] million of term loans under the Amended First Lien Facility. **Impaired.**

**Second Lien Lender
Claims**

On or as soon as practicable after the Effective Date, each holder of an Allowed Second Lien Lender Claim shall receive its pro rata share of (i) []% of the New Equity, subject to dilution from New Equity to be issued in connection with the Management Incentive Plan (as defined below) and (ii) rights to participate in a rights offering for \$[]³ million equal to []% of the New Equity (subject to dilution from New Equity to be issued in connection with the Management Incentive Plan). The Rights Offering Transaction shall be backstopped by Fund I. The proceeds from the Rights Offering Transaction/Backstop, together with available cash of the Debtors, shall be used for (a) the Paydown, (b) payment of fees and expenses in connection with the Restructuring, and/or (c) working capital and other general corporate purposes of NewCo and the Reorganized Debtors. A portion of the amount otherwise to be raised in the Rights Offering Transaction may be structured as an unsecured bridge loan in an amount not to exceed \$[] million from the current Second Lien Lenders that elected to participate in the Rights Offering Transaction (and included in the Backstop), to be repaid solely with the return of cash collateral anticipated to be posted to the lessor of the Company's [] facility and the net proceeds from the sales of Company-owned [] after the Effective Date, and junior in payment and priority only to the New Revolver, the Amended First Lien Facility and the New Second Lien Facility (the "**Bridge Loan**"). The size of the Rights Offering Transaction shall be reduced by the amount of the Bridge Loan on a dollar-for-dollar basis. **Impaired.**

The New Equity is described in the section of the Restructuring Term Sheet entitled "**The Restructuring**".

The Second Lien Lender Claims shall be Allowed in an aggregate amount of approximately €[] million plus accrued interest as of the Petition Date.

**Other Secured
Claims**

To the extent that any Other Secured Claims exist, on or as soon as practicable after the Effective Date, all such secured claims Allowed as of the Effective Date, if not paid previously, shall, at the option of the Debtors, with the consent of Fund I, either (i) be satisfied by payment in full in cash, (ii) be reinstated pursuant to section 1124 of the Bankruptcy Code, or (iii) receive such other recovery necessary to satisfy section 1129 of the Bankruptcy Code. **Unimpaired.**

³ Size of the Rights Offering Transaction is based on \$[] million in Available Cash and a \$[] million draw under the New Revolver for illustrative purposes only. In Fund I's sole discretion, the aggregate size of the Rights Offering Transaction, together with the Bridge Loan, may be increased or decreased (but such that the aggregate size is not less than \$[] million, and the size of the Bridge Loan is not more than \$[] million) to the extent (on a dollar-for-dollar basis) the Available Cash decreases or increases, as applicable, or based on final projected sources and uses, and may be increased up to a total of \$[] million, or up to a greater amount acceptable to Fund I. The pro forma ownership percentages set forth herein are based on a pro forma equity value of \$[] million and assume a pro forma net debt balance of \$[] million. Any increase or decrease in the net debt balance at close shall decrease or increase the assumed equity account on a dollar for dollar basis. Any change in the assumed equity account based on the net debt at close or any increase or decrease in the size of the Rights Offering Transactions shall result in a corresponding change in the pro forma ownership percentages (excluding the Old Equity Distribution, which shall not be adjusted so long as the size of the rights offering together with the Bridge Loan does not exceed the aggregate of \$[] million).

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Unsecured Trade Claims	Each holder of an Allowed Unsecured Trade Claim shall receive payment in full in cash of the unpaid portion of such Allowed General Unsecured Claim on the latest of (a) the Effective Date (or as soon thereafter as reasonably practicable), (b) the date such claim becomes payable in the ordinary course of the Debtors' businesses, and (c) as otherwise agreed by (i) the Debtors, with the consent of Fund I, and (ii) the holder of such claim. Unimpaired.
General Unsecured Claims (including litigation claims and warranty claims)	To the extent that any General Unsecured Claims exist, on or as soon as practicable after the Effective Date, all such Allowed General Unsecured Claims, if not paid previously, shall, at the option of the Debtors, with the consent of Fund I, be satisfied by either (i) payment in full in cash, (ii) reinstatement pursuant to section 1124 of the Bankruptcy Code, (iii) as agreed by the Debtors, with the consent of each of the Initial Lenders, and the holder of such claim, or (iv) such other recovery necessary to satisfy section 1129 of the Bankruptcy Code. Unimpaired.
Deferred Compensation Claims	<p>With respect to current employees of the Debtors, such employees shall receive, in full satisfaction of all of such employees' rights arising under the Special Bonus Plan, the amounts due to them under such deferred compensation plans net of withholding, []% of which net-of-withholding amount shall be granted in the form of New Equity on the same valuation as the rights offering (i.e. for a total amount of []% of the New Equity), subject to call rights and other standard restrictions to be set forth in NewCo's governance documents (e.g. drag rights and transfer restrictions) approved by Fund I and []% of which net-of-withholding amount shall be in cash and (ii) with respect to former employees of the Debtors (including for this purpose the Debtors' CEO), such employees shall have the election of receiving, in full satisfaction of all of such former employees' rights arising under the Special Bonus Plan, either (A) []% of such amounts in cash or (B) (x) []% of the amounts due to such employees in cash and (y) []% of the amounts due to such employees in the form of their pro rata share (such pro rata share to be transferable) of a [] year junior subordinated note with a []% cash coupon and a face value of \$[] million less []% of the pre-tax amount paid pursuant to clause (A) above, junior in payment and priority to the New Revolver, the Amended First Lien Facility and the New Second Lien Facility. The foregoing shall not affect the payment timing with respect to the deferred amounts.</p> <p>It is the intent of the foregoing to not result in a violation of Section 409A of the Internal Revenue Code of 1986, as amended, but neither NewCo nor the Debtors shall be liable to any current or former employee in the event of such violation.</p> <p>All withholding taxes relating to the cash portion of clause (ii) above will be netted by NewCo against the cash to be otherwise delivered.</p> <p>All withholding taxes relating to the junior subordinated note portion of clause (ii) above will be paid on a "net settlement" basis by being deducted from the amount of the note to be issued. Impaired.</p>
Intercompany Claims	On or as soon as practicable after the Effective Date, all Allowed Intercompany

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Claims shall be adjusted, continued, or discharged to the extent determined appropriate by the Debtors, with the consent of each of the Initial Lenders, which consent shall not be unreasonably withheld. **Impaired but deemed to accept.**

Executory Contracts To the extent executory contracts and unexpired leases are not expressly rejected, such contracts and leases shall be assumed, in each case subject to approval by Fund I. Trade vendor contracts shall be assumed and paid in the ordinary course of business. The stock purchase and related agreements will be assumed.

Existing Equity On the Effective Date, all Existing Equity shall be cancelled and shall be of no further force and effect, whether surrendered for cancellation or otherwise. The holders of equity of ABC Ltd., including deferred stock units (“**DSUs**”), shall receive their pro rata share (as determined pursuant to the mechanism set forth below) of cash and/or New Equity equivalent to the value of []% of all of the New Equity before accounting for potential dilution from equity to be issued in connection with the Management Incentive Plan (such stock and cash, the “**Old Equity Distribution**”). The portion of the Old Equity Distribution to be paid in cash shall equal \$[], representing the value of []% of the New Equity constituting the pro rata ownership of ABC Ltd. held by the holders of DSUs on a fully diluted basis (the “**Cash Distribution**”). The remainder of the Old Equity Distribution shall be paid in the form of []% of the New Equity (the “**NewCo Share Distribution**”). ABC Ltd. shall distribute or pay (i) the Cash Distribution *pro rata* to the holders of DSUs and (ii) the NewCo Share Distribution *pro rata* to the remaining equity holders of ABC Ltd., in each case, in liquidation of their interests in ABC Ltd. **Impaired.**

Other Relevant Considerations

Pre-Packaged Chapter 11 Plan Filing and Sponsorship The Pre-Packaged Chapter 11 Plan shall be filed by the Debtors. The Debtors shall use all commercially reasonable efforts to seek confirmation of the Pre-Packaged Chapter 11 Plan as promptly as is practicable.

Management Incentive Plan Fund I and the Debtors or the Reorganized Debtors, as applicable, shall work in good faith to negotiate a management incentive plan (taking into account tax implications) for NewCo (the “**Management Incentive Plan**”), which shall provide for grants of options and/or restricted units/equity reserved for management, directors, and employees for up to (at Fund I’s option) []% of the New Equity. The amount, form, exercise price, allocation and vesting of such equity-based awards, and any limitations thereon, shall be determined and approved by Fund I, and the terms of the Management Incentive Plan shall be designed to ensure that NewCo does not become subject to the reporting requirements of the U.S. Securities and Exchange Commission.

New Revolver On the Effective Date, the New Revolver shall be in full force and effect.

Board Members/Corporate Governance Upon effectiveness of the Pre-Packaged Chapter 11 Plan, organizational or governance documents for NewCo and its subsidiaries shall be adopted, which shall not, as of the Closing Date, grant any special rights to some minority

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stockholders of NewCo on account of shares they receive on the Closing Date that are not granted to all minority stockholders of NewCo on account of shares they receive on the Closing Date, and which shall provide for customary pre-emptive rights for NewCo stockholders who are “accredited investors” (as such term is defined in Rule 501 promulgated under the Securities Act), to the extent possible under applicable securities laws without requiring a registration statement to be filed with respect to NewCo, in the event of any issuances by NewCo of common equity for cash, and in each case acceptable to Fund I (and, for (x) the foregoing documents for any borrower, guarantor or pledgor in respect of the Amended First Lien Facility or the New Second Lien Facility (with respect to those provisions that may likely impact the effectiveness and enforceability of the loans and the security, pledge and similar rights thereunder) and (y) those sections of the foregoing documents for which there are related representations and warranties contained in the Amended First Lien Facility and/or New Second Lien Facility, acceptable to Fund II). The Board of Directors of NewCo shall initially have 7 members, all appointed by Fund I.

Retained Causes of Action

The Pre-Packaged Chapter 11 Plan shall contain customary provisions regarding retention of causes of action.

Releases and Exculpation

The Pre-Packaged Chapter 11 Plan shall include, to the fullest extent permitted by applicable law, a full release from liability in favor of the Debtors, the Existing Equity Holders, the Lenders and all current and former direct and indirect equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives (including their respective equityholders, members, partners, subsidiaries, affiliates, funds, managers, managing members, officers, directors, employees, advisors, principals, attorneys, professionals, accountants, investment bankers, consultants, agents, and other representatives) for any act or omission in connection with, related to, or arising out of, the Restructuring, the Chapter 11 Cases, the pursuit of confirmation of the Pre-Packaged Chapter 11 Plan, the consummation of the Pre-Packaged Chapter 11 Plan or the administration of the Chapter 11 Cases or the property to be distributed under the Pre-Packaged Chapter 11 Plan, except for claims resulting from fraud, gross negligence or willful misconduct as determined by a final order of the Bankruptcy Court.

Conditions to Consummation

The Pre-Packaged Chapter 11 Plan shall contain customary conditions to effectiveness in form and substance to be agreed upon, including, without limitation: (i) the Restructuring Support Agreement has not been terminated; (ii) the Pre-Packaged Chapter 11 Plan has been confirmed pursuant to the Confirmation Order and the Confirmation Order has become a final order in form and substance acceptable to each of the Initial Lenders, and is not stayed; (iii) payment in full, in cash, of all invoices for reasonable fees and expenses incurred by advisors to Fund I and legal advisors to Fund II and reasonable and documented fees and expenses of Fund I or its affiliates, to the extent provided in the Restructuring Support Agreement and (iv) conditions similar to those set forth in Section 1(c) of the Restructuring Support Agreement.

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Other Provisions

Other provisions shall be more fully set forth in the Restructuring Support Agreement, the Pre-Packaged Chapter 11 Plan and Disclosure Statement and shall be acceptable to each of the Initial Lenders and the Debtors, to the extent set forth therein; provided that no provision in the Pre-Packaged Chapter 11 Plan or Disclosure Statement may be materially inconsistent with the terms in this Plan Term Sheet.

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EXHIBIT A

DEBTORS

Exhibit C

Omitted

Exhibit D

Omitted

BACKSTOP AGREEMENT

THIS BACKSTOP AGREEMENT (the “*Agreement*”), dated as of [], 2013, is made and entered into by and among [] (the “*Company*”) and the entities set forth on the signature pages hereto (each a “*Purchaser*” and, collectively, the “*Purchasers*”). Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings provided in the Restructuring Support Agreement (as defined below).

WITNESSETH:

WHEREAS, the Company has proposed the Restructuring;

WHEREAS, on or about [], the Company, Sponsor and the Initial Lenders entered into that certain Restructuring Support Agreement (together with the exhibits and schedules annexed thereto or referred to therein, and as such may be modified or amended from time to time, the “*Restructuring Support Agreement*”);

WHEREAS, on or about the date hereof, the Company intends to commence the Exchange Offers and the Rights Offering Transaction pursuant to an offering memorandum and consent solicitation statement (together with the exhibits and schedules annexed thereto or referred therein, as such may be modified or amended from time to time, the “*Offering Memorandum*”);

WHEREAS, pursuant to certain circumstances as set forth in the Restructuring Support Agreement, the Company may effectuate the Restructuring by commencing (together with certain of its Affiliates) the Chapter 11 Cases in the Bankruptcy Court, in connection with which the Company intends to file the Prepackaged Chapter 11 Plan, as provided in the Restructuring Support Agreement, and related documents (such process, an “*In-Court Process*,” and the date of the commencement of such case, the “*Petition Date*”) and the terms of the Exchange Offers shall be superseded by the terms of the Prepackaged Chapter 11 Plan; and

WHEREAS, the Restructuring Support Agreement contemplates, among other things, the Rights Offering Transaction (the transactions contemplated by the Restructuring Support Agreement being the “*Transactions*”), with Affiliates of Fund I fully backstopping the entire unsubscribed amount of the Rights Offering Transaction.

NOW, THEREFORE, for and in consideration of the premises, and other good and valuable consideration the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto agree as follows:

1. The Commitment. Subject to the terms, conditions and limitations set forth herein, each Purchaser agrees (i) to subscribe, pursuant to the subscription form attached to the Offering Memorandum and provided to such Purchaser in connection with the Rights Offering Transaction, for the amount set forth in its respective subscription form, which amount shall be its *pro rata* share (based on the aggregate principal amount of Second Lien Term Loans held by such Purchaser as of the relevant record date) of the New Equity offered in the Rights Offering,

and (ii) in addition, to purchase, at the Closing, its proportionate share, as set forth on Schedule 1 hereto, of the entire amount of unsubscribed New Equity offered in the Rights Offering Transaction, at the purchase price per unit set forth in such subscription form, subject to the adjustments set forth in the Restructuring Support Agreement (the “**Purchase Price**”). The obligations of Purchasers described in this Section 1 shall be referred to herein as the “**Commitment**.”

2. The Closing.

(a) The delivery of and payment for the New Equity is referred to herein as the “**Closing**,” and the date of the Closing is referred to herein as the “**Closing Date**.” The Closing shall occur prior to, simultaneously with or after, as the case may be, the consummation of the other Transactions as set forth in the Restructuring Support Agreement, assuming the satisfaction and/or waiver of all conditions to the Closing set forth herein (other than conditions which by their nature can be satisfied only at the Closing). The Closing shall take place at the offices of [] at 10:00 AM New York City time, as specified below, unless another date, time and/or place is agreed in writing by each of the parties hereto.

(b) The following shall occur on the Closing Date:

(i) each Purchaser, in satisfaction of its Commitment, shall to the maximum extent reasonably possible pay or contribute (X) for the benefit of, and on behalf of, NewCo and its subsidiaries (including the loan parties under the Existing First Lien Facility) (A) the amounts required by its subscription form with respect to the New Equity subscribed for therein and (B) its respective aggregate Purchase Price for its proportionate share of unsubscribed New Equity pursuant to Section 1, by wire transfer in immediately available funds to an account maintained at the First Lien Agent, which account shall be identified no later than two Business Days prior to the Closing by written notice to the Purchasers’ Representative (as defined below), and which proceeds shall be used in partial satisfaction of the Company and its subsidiaries’ obligation to make the Paydown in connection with the Existing First Lien Facility, and otherwise (Y) any amount of its Commitment not paid pursuant to the preceding clause by wire transfer in immediately available funds to the NewCo’s account, which account shall be identified no later than two Business Days prior to the Closing by written notice to the Purchasers’ Representative, and which proceeds shall be used as contemplated by the Restructuring Support Agreement. The Company and Purchasers agree that any funds paid by Purchasers pursuant to clause (X) above shall be treated as a capital contribution to NewCo, and that NewCo and its subsidiaries will be deemed to have used such funds in accordance with the closing memorandum prepared by Fund I;¹

¹ Notwithstanding the foregoing, if in Fund I’s judgment compliance with clause (X) above will result in the Transactions not receiving the tax treatment anticipated by Fund I on the date of the Restructuring Support Agreement, the Company and the Initial Lenders will work together to implement the satisfaction by each Purchaser of its Commitment in a mutually acceptable fashion (including by each Purchaser paying funds directly to NewCo), it being understood that in no circumstances shall Purchasers be required to take any actions that could result in the Transactions not receiving such tax treatment anticipated by Fund I and that if the Company and the Initial Lenders cannot otherwise agree, Purchaser’s Commitment shall in its entirety be treated in accordance with clause (Y) above.

(ii) the New Equity to be purchased or subscribed for by each Purchaser, in the name of each Purchaser or its designee, shall be recorded in the books and records of NewCo or by a transfer agent selected by NewCo to maintain such records; and

(iii) (A) subject to the entry by the Bankruptcy Court of the Cash Collateral Order or an order approving this Agreement (the “**Agreement Approval Order**”) in the event of an In-Court Process, or (B) if other than an In-Court Process, in any event, the Company shall pay the fees, costs and expenses as described in Sections 4(b) and 4(c) of the Restructuring Support Agreement (all of the fees, costs, and expenses referenced in this Section 2(b)(iii) collectively, the “**Expenses**”).

For the avoidance of doubt, if the closing of the other Transactions does not occur, the foregoing shall not occur even if all conditions herein have been satisfied.

3. Representations and Warranties.

(a) Except as set forth in the corresponding section of the disclosure schedules delivered by the Company to Purchasers in connection with the execution of this Agreement (the “**Company Disclosure Schedules**”),² the Company represents and warrants the following to each Purchaser:

(i) Organization and Qualification. The Company and each of its subsidiaries is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and has all requisite corporate, partnership or limited liability company power and authority to own, lease, and operate their respective properties and assets and to conduct their respective businesses as now being conducted. The Company and each of its subsidiaries is duly qualified to transact business in each jurisdiction in which the nature of property owned or leased by them or the conduct of their business requires them to be so qualified, except where the failure to be duly qualified to transact business, would not reasonably be expected to have a Material Adverse Effect.

(ii) Company’s Ownership. Upon the consummation of the Transactions, the ownership interests of NewCo will be as set forth in the Offering Memorandum, and all such ownership interests will be duly authorized, validly issued, fully paid, and nonassessable, and, all such ownership interests will be free and clear of all Liens and not subject to any preemptive rights, rights of first refusal, option, warrant, call, subscription, and similar rights, other than, in each case, created by any of the Purchasers or as set forth in the Governance Documents.

(iii) Subsidiaries’ Equity Interests. Except as set forth in Schedule [] of the Company Disclosure Schedules, all of the issued ownership interests of each of the subsidiaries of the Company are duly and validly authorized and issued, fully paid, nonassessable, and directly owned by the Company or its applicable subsidiary and are free and clear of all Liens other than Liens under the Existing Revolver, the Existing First Lien Facility, the Existing Second Lien Facility, the New Revolver, the Amended First Lien Facility or the

² Company disclosure schedules to be attached at signing, and to be acceptable to Fund I.

New Second Lien Facility (the “**Existing Liens**”) and not subject to any preemptive rights, rights of first refusal, option, warrant, call, subscription, and similar rights. Except as set forth on Schedule ____ of the Company Disclosure Schedules, each subsidiary of the Company is wholly owned, directly or indirectly, by the Company.

(iv) Power and Authority; Enforceability. The Company and each of its subsidiaries, as the case may be, has the requisite corporate, partnership, limited liability company or similar power and authority to execute and deliver this Agreement (in the case of an In-Court Process, subject to entry of the Agreement Approval Order) and the definitive documents necessary or appropriate to consummate the Transactions and to perform its obligations hereunder (in the case of an In-Court Process, subject to entry of the Agreement Approval Order, the Confirmation Order and the expiration, or waiver by the Bankruptcy Court, of the fourteen-day period set forth in Rule 3020(e) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”)). This Agreement and such documents executed in connection herewith or therewith have been (1) duly and validly authorized by all necessary corporate, partnership, limited liability company or other action on the part of the Company and its subsidiaries, as applicable, and (2) duly and validly executed and delivered by the Company and its subsidiaries, as applicable.

(v) No Conflict. Except as set forth in Schedule [] of the Company Disclosure Schedules or as may occur as the result of commencement of the In-Court Process, (A) the execution and delivery of this Agreement and each of the definitive documents necessary to effect the Transactions contemplated hereby by the Company and its subsidiaries, do not and shall not (1) violate any provision of the operating agreement, articles of incorporation or by-laws or other organizational documents of the Company or any of its subsidiaries (2) conflict with, violate, constitute a breach of, or result in the creation of a Lien or any other encumbrance against the Company or any of its subsidiaries or their properties (other than the Existing Liens) pursuant to, or give rise to any termination or other rights under, any material contract, agreement, or instrument by which the Company or any of its subsidiaries are bound, or any judgment, order, decree, law, statute, rule, regulation, or other judicial or governmental restriction to which the Company or any of its subsidiaries are subject or (3) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any contract, agreement, arrangement, permit or governmental authorization to which the Company or any of its subsidiaries is a party or by which it or they are bound or to which any of the its or their assets are subject; and (B) the performance of this Agreement and each of the definitive documents necessary to effect the Transactions by the Company and its subsidiaries, as applicable, and the consummation by the Company and its subsidiaries of the Transactions, do not (1) violate any provision of the operating agreement, the articles of incorporation or by-laws or other organizational or governing documents of the Company or any of its subsidiaries, or (2) conflict with, violate, constitute a breach of, or result in the creation of a Lien or any other encumbrance against the Company or any of its subsidiaries or their properties (other than the Existing Liens) pursuant to, or give rise to any termination or other rights under, any material contract, agreement, or instrument by which the Company or any of its subsidiaries shall be bound, or any judgment, order, decree, law, statute, rule, regulation, or other judicial or governmental restriction to which

the Company or any of its subsidiaries shall be subject in each case as of, and following, the Closing Date.

(vi) Enforceability. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms, provided that in the event of an In-Court Process, upon the entry of the Agreement Approval Order, and assuming this Agreement will constitute the valid and binding agreement of the other parties hereto, this Agreement will constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar law affecting the enforcement of creditors' rights generally and subject to general principles of equity (whether enforcement is sought by proceeding in equity or at law).

(vii) No Material Adverse Effect. Since _____, (A) there has been no Material Adverse Effect, (B) other than in connection with the Transactions and the Restructuring Support Agreement, neither the Company nor its subsidiaries, considered as one entity, has incurred any material liability or obligation, direct or contingent, other than in the ordinary course of business or pursuant to any agreements with respect to the sale of [] which have been disclosed to Purchasers' Representative prior to the date of the Restructuring Support Agreement or which took place between the date of the Restructuring Support Agreement and the date hereof as permitted by Section 4(h) of the Restructuring Support Agreement and (C) the Company has not taken any of the actions prohibited pursuant to Section 5(e).

(viii) Sufficiency of Assets; Title to Assets. Taken as a whole, the Company and its subsidiaries own, lease or license all such properties as are necessary to the conduct of their business operations as presently conducted in all material respects (such properties, the "**Company Assets**"). The Company Assets are in each case free and clear of any Liens other than Existing Liens and those Liens permitted to exist under the Existing Revolver, the Existing First Lien Facility, the Existing Second Lien Facility, the New Revolver, the Amended First Lien Facility or the New Second Lien Facility.

(ix) Litigation. Except for the In-Court Process (if commenced) or as set forth in Schedule [] of the Company Disclosure Schedules, there is no pending litigation, proceeding, or governmental investigation (collectively, "**Litigation**") (A) to which the Company or any of its subsidiaries is a party, that would, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect or (B) to the knowledge of the Company or any of its subsidiaries, threatened against the Company or any of its subsidiaries or any properties or rights of the Company or any of its subsidiaries, that would, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

(x) No Violation or Default. Except as set forth in Schedule [] of the Company Disclosure Schedules or as caused by the commencement or pendency of the In-Court Process, if commenced, neither the Company nor any of its subsidiaries is: (A) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the

Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, except for defaults, violations or otherwise that could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect; or (B) in violation of any law or order of any Governmental Authority, except for defaults, violations or otherwise that could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

(xi) Securities Registration Exemption. Assuming the representations of the Purchasers set forth in Section 3(b)(v) and (vi) are true and correct, the issuance of the New Equity to the Purchasers shall be exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended (the “*Securities Act*”).

(xii) Investment Company Act. Neither the Company nor any of its subsidiaries is and, after giving effect to the offering and sale of the New Equity and the application of the proceeds thereof as contemplated by this Agreement, will be, required to register as an “investment company” or an entity “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder.

(xiii) Takeover Statutes; Charter. No “fair price,” “moratorium,” “control share acquisition,” “business combination” or other similar anti-takeover statute or regulation is applicable to the Company or any of its subsidiaries, the New Equity, the sale and issuance of the New Equity or the Transactions.

(xiv) No Broker’s Fees. Except as set forth on Schedule [] of the Company Disclosure Schedules, neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any Person that would give rise to a valid claim against the Company or any of its subsidiaries for a brokerage commission, finder’s fee or like payment in connection with the Transactions.

(xv) Financial Statements. The historical consolidated financial statements and the related notes thereto of the Company and its subsidiaries included in the Offering Memorandum present fairly in all material respects the financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations and the changes in their cash flows for the periods indicated; such financial statements have been prepared in conformity with GAAP applied on a consistent basis throughout the periods covered thereby (except, in the case of unaudited financial statements included in the Offering Memorandum, for normal and recurring year end adjustments and the absence of footnotes); and the other financial information included in the Offering Memorandum has been derived from the accounting records of the Company and its subsidiaries or, where clearly indicated, from general industry data and presents fairly the information shown thereby (except for information set forth under the headings captioned [“Projections of Certain Financial Data Following Consummation of the Plan of Reorganization,” “Liquidation Analysis” and “Summary—Conditions to the Exchange Offers and Plan of Reorganization—Enterprise Valuation”] and except as otherwise set forth therein).

(xvi) Consents and Approvals. Except as set forth in Schedule [] of the Company Disclosure Schedules, no material consent, approval, authorization, order, registration or qualification of or with any Governmental Authority having jurisdiction over the Company, any of its subsidiaries or any of their properties is required for the sale, issuance and delivery of the New Equity and the consummation of the Transactions and the execution and delivery by the Company of this Agreement, the performance by the Company of the provisions hereof, except (A) in the event of an In-Court Process, the entry of the Agreement Approval Order and the Confirmation Order, and the expiration, or waiver by the Bankruptcy Court, of the fourteen-day period set forth in Bankruptcy Rules 3020(e), as applicable, (B) such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky Laws in connection with the issuance and/or purchase of the New Equity or as disclosed in the Offering Memorandum, (C) such consents, approvals, authorizations, registrations or qualifications as may be required under the Hart-Scott-Rodino Improvements Act of 1976, and (D) such as have been made or obtained and are in full force and effect.

(xvii) No Undisclosed Liabilities. The Company and its subsidiaries, considered as one entity, do not have any material Liabilities of a nature required to be disclosed on a balance sheet and the notes thereto, except (A) as set forth in the Company's consolidated balance sheet as of ____ set forth in the Offering Memorandum or as otherwise disclosed in the Offering Memorandum, (B) incurred in the ordinary course of business since the date of such balance sheet, (C) for fees and expenses incurred in connection with the Transactions, and (D) obligations required to be performed after the date of this Agreement under any contract to which the Company or any subsidiary is a party or will become a party to upon the consummation of the Transactions.

(xviii) Labor and Employment Matters.

(A) There are no strikes pending or, to the knowledge of the Company, reasonably expected to be commenced against the Company or its subsidiaries that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The hours worked and payments made to employees of the Company or its subsidiaries have not been in violation of any applicable laws, rules or regulations, except where such violations would not reasonably be expected to have a Material Adverse Effect.

(B) The Company and each of its subsidiaries are in compliance in all material respects with all applicable material laws and regulations relating to labor and employment, including but not limited to laws relating to discrimination, equal employment opportunities, disability, labor relations, hours of work, payment of wages, overtime pay, immigration, workers' compensation, employee benefits, unemployment benefits, working conditions, occupational safety and health, family and medical leave, employee terminations, and all material laws regarding the hiring, promotion, assignment, and termination of employees,. To the knowledge of the Company after reasonable inquiry, (i) the Company and its subsidiaries have not misclassified any employees as independent contractors, leased employees, volunteers, or any other type of workers, and (ii) no individual has been improperly classified as an "exempt" employee or excluded from any Company Benefit Plans. Schedule [] of the Company Disclosure Schedules sets forth a list of all material Company Benefit Plans and no Company Benefit Plan is a Title IV Plan or a Retiree Welfare Plan.

(xix) Affiliate Transactions.

(A) Except as disclosed on Schedule [] of the Company Disclosure Schedules (other than intercompany items between and among the Company and/or its subsidiaries), (1) there are no outstanding notes payable to, accounts receivable from or advances by the Company or its Affiliates in connection with the Company's business or involving any assets thereof, and neither the Company nor any of its subsidiaries is otherwise a debtor or creditor of, or has any Liability of any nature to, any Related Party of the Company and (2) except for compensation or benefits paid to employees in the ordinary course, since _____, neither the Company nor any of its subsidiaries has incurred any material Liability to, or entered into or agreed to enter into any contract or transaction with or for the benefit of, any Related Party of the Company, other than the Transactions.

(B) For purposes of this Agreement, "**Related Party**" means: (1) any Affiliate of the Company, or any director, executive officer, general partner or managing member of such Affiliate; (2) any Person who serves or within the past 12 months has served as a director, executive officer, partner, member or in a similar capacity of the Company or any of its Affiliates; (3) any immediate family member of a Person described in clause (2); or (4) any other Person who directly or indirectly holds, individually or together with any Affiliate of such other Person and any member(s) of such Person's immediate family, more than 5% of the outstanding equity or ownership interests of the Company or any of its Affiliates prior to the Transactions.

(xx) Capitalization. Except as disclosed on Schedule [] of the Company Disclosure Schedules, none of the Company or any of its subsidiaries is a party to or otherwise bound by or subject to any outstanding option, warrant, call, subscription or other right (including any preemptive right), agreement or commitment which (A) obligates the Company or any of its subsidiaries to issue, deliver, sell or transfer or repurchase, redeem or otherwise acquire, or cause to be issued, delivered, sold or transferred or repurchased, redeemed or otherwise acquired, any shares of the equity securities of, or other equity or voting interests in the Company or any of its subsidiaries or any security convertible or exercisable for or exchangeable into any equity security of, or other equity or voting interest or loan stock in the Company or any of its subsidiaries, (B) obligates the Company or any of its subsidiaries to issue, grant, extend or enter into any such option, warrant, call, right, security, commitment, contract, arrangement or undertaking, (C) restricts the transfer of any shares of equity security of the Company or any of its subsidiaries or (D) relates to the voting of any equity securities of the Company or any of its subsidiaries.

(xxi) Tax Matters. Except as disclosed on Schedule [] of the Company Disclosure Schedule:

(A) Except as would not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect, all United States federal, state, local and other tax returns and foreign tax returns of the Company and its subsidiaries required to be filed by any of them have been timely filed (taking into account any applicable extensions), and all such tax returns were (and, as to tax returns not filed as of the date hereof, shall be) true, complete and correct in all material respects. All material taxes, assessments, fees and other governmental

charges upon the Company and its subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable or are being contested in good faith through appropriate proceedings. Except for proposed tax assessments being contested in good faith for which adequate reserves have been established on its financial statements in accordance with GAAP, there are no proposed tax assessments against the Company or any of its subsidiaries. No tax audits, investigations or administrative or judicial proceedings are pending or in progress or, to Company's knowledge, have been threatened with respect to the Company or its subsidiaries. Neither the Company nor any of its subsidiaries has granted any extension or waiver of the limitation period applicable to any tax returns. There are no liens relating to an amount of taxes upon the assets of the Company or any subsidiary, except liens for taxes not yet due.

(B) No agreement as to indemnification for, contribution to, or payment of taxes exists between the Company or any subsidiary, on the one hand, and any other person, including pursuant to any tax sharing agreement, lease agreement, purchase or sale agreement, partnership agreement or any other agreement. Neither the Company nor any subsidiary has any liability for taxes of any person (other than a person who is a member of the affiliated group filing a U.S. federal consolidated return of which the Company is the parent) under Treasury Regulation section 1.1502-6 (or any similar provision of any state, local or foreign law), or as a transferee or successor, or by contract or otherwise. As of ____, the excess loss account of ABC Holding, Inc. in the stock of ABC International for U.S. federal income tax purposes did not exceed \$[].

(xxii) Full Disclosure. No representation, statement, or information contained in this Agreement (including the Company Disclosure Schedules) or any agreement or document executed in connection herewith or delivered pursuant hereto or thereto or made available or furnished to the Purchasers or their representatives by the Company (including the Offering Memorandum), contains or will contain any untrue statement of a material fact or omits or will omit any material fact necessary to make the statements contained therein, in light of the circumstances in which such statements were made, not misleading. To the extent requested, the Company has provided the Purchasers with true, correct and complete copies of all documents listed or described in the Company Disclosure Schedules.

(b) Each Purchaser hereby represents and warrants the following to the Company:

(i) Organization; Power and Authority. It is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and has all requisite power and authority to execute, deliver, and perform its obligations hereunder and to consummate the Transactions contemplated hereby. Each Purchaser is an Affiliate of Fund I.

(ii) Execution and Delivery. The execution, delivery, and performance by such Purchaser of this Agreement, and the consummation by such Purchaser of the Transactions contemplated hereby, have been duly and validly authorized by all necessary action on the part of such Purchaser.

(iii) Enforceability. This Agreement has been duly executed and delivered by each Purchaser and, when duly and validly executed by each other party hereto, constitutes the legal, valid, and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights in general and by general principles of equity (whether enforcement is sought in a court of equity or law).

(iv) No Conflict. The execution, delivery, and performance of this Agreement and the consummation by such Purchaser of the Transactions contemplated hereby do not and shall not (A) violate any provision of the operating agreement, articles of incorporation or by-laws or other organizational or governing documents of such Purchaser or (B) conflict with, violate, constitute a breach of, or result in the creation of a Lien or any other encumbrance against, such Purchaser or its properties pursuant to any material contract, agreement, or instrument by which such Purchaser is bound or any judgment, order, decree, law, statute, rule, regulation, or other judicial or governmental restriction to which such Purchaser is subject.

(v) Accredited Investor. It is an "accredited investor" within the meaning of Rule 501 of the Securities Act, with such knowledge and experience in financial and business matters as are necessary in order to evaluate the merits and risks of an investment in the New Equity.

(vi) Securities Laws Compliance. The New Equity to be received by such Purchaser hereunder will be acquired for such Purchaser's own account or on behalf of managed accounts and not with a view to the resale or distribution of any part thereof in violation of the Securities Act, and such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the Securities Act or any applicable state securities laws. Notwithstanding anything in this Section 3(b)(vi) to the contrary, by making the representations herein, such Purchaser does not agree to hold the New Equity for any minimum or other specific term and reserves the right to dispose of its respective New Equity at any time in accordance with or pursuant to a registration statement or an exemption from the registration requirements under the Securities Act and any applicable state securities laws.

(vii) Independent Investigation; Retention of Tax Advisors. It has made its own inquiry and investigation into the Company and has undertaken such investigation and had access to such information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. It has consulted its own tax advisors with regard to the Transactions contemplated by this Agreement and the tax consequences thereof.

(viii) No Registration Under the Securities Act. It understands (A) that the New Equity to be purchased by it pursuant to the terms of this Agreement has not been registered under the Securities Act or any state securities laws, (C) that the Company shall not be required to effect any registration or qualification of the New Equity under the Securities Act or any state securities laws, (D) that the New Equity will be issued in reliance upon exemptions

contained in the Securities Act or interpretations thereof and in the applicable state securities laws and (E) that the New Equity may not be offered for sale, sold or otherwise transferred except pursuant to a registration statement under the Securities Act or in a transaction exempt from or not subject to registration under the Securities Act.

(ix) No Proceedings. No litigation or proceeding against such Purchaser is pending before any court, arbitrator, or administrative or governmental body, nor, to such Purchaser's knowledge, is any such proceeding threatened against such Purchaser that would adversely affect such Purchaser's ability to enter into this Agreement or fully perform its obligations hereunder or its obligations under the Restructuring Support Agreement or the Transactions.

(x) No Authorization or Consents Required. No notice to or consent, approval or authorization of, or designation, declaration or filing with, any Governmental Authority or other Person is required by such Purchaser with respect to the execution or delivery of the Agreement or the consummation of the Transactions except such consents, approvals, authorizations, registrations or qualifications as may be required under the Hart-Scott-Rodino Improvements Act of 1976.

4. Certain Conditions.

(a) The obligations of each Purchaser to consummate the Transactions contemplated herein shall be subject to the satisfaction, or waiver by Fund I (the "**Purchasers' Representative**") on behalf of each Purchaser, as applicable, of each of the following conditions:

(i) other than in the case of an In-Court Process, the closing of the other Transactions shall occur prior to, simultaneously with or after, as the case may be, the Closing;

(ii) in the event of an In-Court Process, the Agreement Approval Order and the Confirmation Order shall have been entered by the Bankruptcy Court and shall not have been stayed. The Prepackaged Chapter 11 Plan, as approved, and the Confirmation Order, as entered, in each case by the Bankruptcy Court and pursuant to the Restructuring Support Agreement, shall be consistent with the requirements for the Prepackaged Chapter 11 Plan and the Confirmation Order set forth in this Agreement, and the conditions to confirmation and the conditions to the effective date of the Prepackaged Chapter 11 Plan shall have been satisfied or waived, with the consent of the Purchasers' Representative, by the Company in accordance with the Prepackaged Chapter 11 Plan;

(iii) the Restructuring Support Agreement is still in full force and effect, and has not been terminated;

(iv) the equity of NewCo shall be as provided in the Restructuring Support Agreement, and any other equity securities of NewCo, including agreements, plans and understandings relating to ownership of equity securities, shall have been cancelled and terminated;

(v) (A) the representations and warranties of the Company contained in this Agreement that are qualified as to materiality, Material Adverse Effect, or similar qualifiers, the representation and warranty contained in Section 3(a)(vii) (No Material Adverse Effect) and the representation and warranty contained in the last sentence of Section 3(a)(xxi)(B), shall be true and correct in all respects both on and as of the date hereof and as of the Closing Date with the same force and effect as though made on and as of such date (except to the extent that any such representation or warranty is made as of a specified date, in which case such representation or warranty shall be true and correct in all respects as of such specified date), (B) the representations and warranties of the Company contained in this Agreement that are not so qualified shall be true and correct in all material respects on and as of the date hereof and as of the Closing Date with the same force and effect as though made on and as of such date (except to the extent that any such representation or warranty is made as of a specified date, in which case such representation or warranty shall be true and correct in all material respects as of such specified date), and (C) in all material respects, the Company shall have performed or complied with, or caused its subsidiaries to have performed or complied with, all covenants required to be performed or complied with under this Agreement on or prior to the Closing Date (and with respect to the covenant in Section 5(h), in all respects), and the Company shall have delivered to Purchasers a certificate of its Chief Executive Officer or Chief Financial Officer (in their capacity as such) to the effect that, to the knowledge of the person executing the same, each of the conditions specified in this Section 4(a)(vii) is satisfied in all respects;

(vi) All governmental and third party approvals necessary in connection with the Transactions and the issuance or sale pursuant to this Agreement and the Offering Memorandum of the New Equity shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the Transactions or the issuance or sale pursuant to this Agreement and the Offering Memorandum of the New Equity.

(vii) since the date of the most recent historical consolidated financial statements of the Company included in the Offering Memorandum, there shall have been no judgments or settlements related to any litigation or claims against the Company and/or any of its subsidiaries in excess of \$[] million in the aggregate;

(viii) the Company shall have in place directors' and officers' insurance policies and errors and omissions insurance policies consistent with the requirements therefore under the Restructuring Support Agreement;

(ix) all notifications, filings, consents, waivers and approvals set forth on Section [] of the Company Disclosure Schedules shall have been made or received and shall remain in full force and effect;

(x) other than in the case of an In-Court Process, an opinion of Cayman counsel to NewCo, reasonably satisfactory to Purchasers and typical in form and qualifications, as to matters such as due authorization, enforceability, no conflicts and valid issuance of the New Equity, shall have been delivered to Purchasers;

(xi) all conditions set forth in Section 1(c) of the Restructuring Support Agreement shall have been satisfied or waived in accordance with the Restructuring Support Agreement; and

(xii) on the Closing Date, no options, warrants or other rights to acquire equity securities of NewCo will be outstanding, other than the New Equity issued as described herein.

(b) The obligations of the Company to consummate the Transactions contemplated herein shall be subject to the satisfaction (or waiver by the Company) of each of the following conditions:

(i) other than in the case of an In-Court Process, the closing of the other Transactions shall occur prior to, simultaneously with or after, as the case may be, the Closing (other than those Transactions which are permitted to be, and have been, waived by the Initial Lenders without the Company's consent, or waived by Fund I without the Company's or Fund II's consent);

(ii) in the event of an In-Court Process, the Agreement Approval Order and the Confirmation Order shall have been entered by the Bankruptcy Court and shall not have been stayed. The Prepackaged Chapter 11 Plan, as approved, and the Confirmation Order, as entered, in each case by the Bankruptcy Court and pursuant to the Restructuring Support Agreement, shall be consistent with the requirements for the Prepackaged Chapter 11 Plan and the Confirmation Order set forth in this Agreement, and the conditions to confirmation and the conditions to the effective date of the Prepackaged Chapter 11 Plan shall have been satisfied or waived, with the consent of the Purchasers' Representative, by the Company in accordance with the Prepackaged Chapter 11 Plan;

(iii) (A) the representations and warranties of Purchasers contained in this Agreement shall be true and correct both on and as of the date hereof and the Closing Date with the same force and effect as though made on and as of such date (except to the extent that any such representation or warranty is made as of a specified date, in which case such representation or warranty shall be true and correct as of such specified date), and (B) each Purchaser shall have performed or complied with its covenants required to be performed or complied with under this Agreement on or prior to the Closing Date, except in each of cases (A) and (B) for such failures of representations and warranties to be true and correct (without giving effect to any materiality qualification or standard contained in any such representations and warranties) or covenants to have been performed which would not have a material adverse effect on the ability of the Purchasers to carry out their obligations hereunder; and

(iv) the Restructuring Support Agreement is still in full force and effect, and has not been terminated.

5. Certain Covenants.

(a) Reasonable Best Efforts. (1) The Company shall use its commercially reasonable best efforts to cause the conditions set forth in Section 4(a) to be satisfied and to consummate the Transactions contemplated herein by the Closing and (2) Purchasers shall use

their commercially reasonable best efforts to cause the conditions set forth in Section 4(b) to be satisfied and to consummate the Transactions contemplated herein by the Closing, provided that nothing in this clause (2) shall in any way limit or over-ride, and shall in all respects be subject to, the rights of Purchasers or their affiliates under the Restructuring Support Agreement, including the right to consent or not consent to any document or action or not to waive any conditions to closing.

(b) Notice of Changes. The Company shall promptly deliver to Purchasers and each Purchaser shall deliver to the Company, as applicable, written notice upon becoming aware of any matter, event, or development that would (i) render any representation or warranty made by it herein inaccurate or incomplete in any respect or (ii) constitute or result in a breach by it of, or a failure by it to comply with, any covenant, condition or agreement in the Restructuring Support Agreement or herein to be complied with or satisfied by it on or prior to the Closing Date.

(c) Further Assurances. The Company and each Purchaser shall, and shall cause their respective subsidiaries to, execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action and cause entities controlled by them to take such action as may be reasonably necessary (or as reasonably requested by the Company or the Purchasers' Representative, as applicable) to carry out the Transactions.

(d) Affiliated Transactions Prior to Closing Date. The Company shall comply with Section 4(g) of the Restructuring Support Agreement.

(e) Conduct of Business. Except as explicitly set forth herein or otherwise expressly contemplated by the Restructuring Support Agreement or the Transactions, or with the express consent of the Purchasers' Representative, during the period from the date of the Restructuring Support Agreement to the Closing Date, the Company shall, and shall cause the subsidiaries to, carry on their businesses in the ordinary course and, to the extent consistent therewith, use their commercially reasonable efforts to preserve intact their current material business organizations, keep available the services of their current officers and employees and preserve their material relationships with customers, suppliers, licensors, licensees, distributors and others having business dealings with the Company or its subsidiaries; provided that the Company shall be permitted to (i) cash collateralize the Letters of Credit in accordance with the Restructuring Term Sheet, (ii) enter into such waivers (in addition to the Waivers) as may be required under the Existing Revolver, the Existing First Lien Facility and the Existing Second Lien Facility (collectively, the “**Existing Credit Facilities**”); provided that nothing herein shall be deemed to commit any lender under the Existing Credit Facilities to grant or enter into any such additional waivers and (iii) enter into any agreements with respect to the sale of [], in the case of (i) and (iii) as approved by Purchasers' Representative. Without limiting the generality of the foregoing, and except as otherwise expressly provided or permitted by this Agreement or required to effect the transactions contemplated in the Offering Memorandum, prior to the Closing Date, the Company shall not, and shall cause its subsidiaries not to, take any of the following actions without the prior written consent of Purchasers' Representative (not to be unreasonably withheld, conditioned or delayed):

(i) amend, authorize or propose to amend its charter, articles, certificate of formation, or equivalent organizational or governance documents;

(ii) (A) declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its equity securities, (B) split, sub-divide, combine or reclassify any of its equity securities or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its equity securities, (C) purchase, redeem or otherwise acquire any securities or any rights, warrants or options to acquire any such securities, or (D) make any payment, or incur any liability, to any of its direct or indirect equity securities holders or any Related Party thereof, other than employee compensation made in the ordinary course of business consistent with past practices and other payments in respect of, and in accordance with the present terms of, agreements set forth on Schedule [] hereto;

(iii) issue, deliver, grant, sell, pledge, dispose of or otherwise encumber any of its equity securities or any securities convertible into, or any rights, warrants or options to acquire, any such equity securities;

(iv) incur or commit to incur any capital expenditures or authorizations or commitment with respect thereto that in the aggregate are in excess of \$[] million;

(v) acquire or agree to acquire by merging or consolidating with, or purchase any portion of the stock of, or other ownership interests in, or substantial portion of assets of, or by any other manner, any business or any corporation, partnership, association, joint venture, limited liability company or other entity or division thereof;

(vi) sell, lease, mortgage, pledge, grant a lien, mortgage, pledge, security interest, charge, claim or other encumbrance of any kind or nature on or otherwise encumber or dispose of any of its properties or assets, except in the ordinary course of business consistent with past practice;

(vii) incur any indebtedness for borrowed money or guarantee any such indebtedness of another individual or entity, issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any of its subsidiaries, guarantee any debt securities of another individual or entity, enter into any “keep well” or other agreement to maintain any financial statement condition of another Person (other than a subsidiary) or enter into any arrangement having the economic effect of any of the foregoing;

(viii) except as required to comply with law or as disclosed on Schedule [] and, in the case of clauses (C) and (D), except in the ordinary course of business consistent with past practice: (A) enter into, adopt, amend or terminate any Company Benefit Plan, (B) increase in any material manner the compensation or fringe benefits of any existing director or officer of the Company or any of its subsidiaries other than in the ordinary course of business, (C) enter into, renew (other than contracts, commitments or arrangements that by their terms renew automatically without action by either party) or terminate any contract, commitment or arrangement providing for the payment of compensation or benefits to any director or executive of the Company or any of its subsidiaries, (D) terminate the employment of or hire any executive or director of the Company (other than termination for cause) or (E) provide severance benefits

to any employee, director or officer of the Company or its subsidiaries. For the purposes of this Agreement, the term “executive” shall mean any employee of the Company or any of its subsidiaries at the vice president level (or equivalent) or higher.

(ix) (A) pay, discharge, settle or satisfy any claims, liabilities or obligations (whether absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction of claims, liabilities or obligations (1) in the ordinary course of business consistent with past practice or as required by the Restructuring Support Agreement, the Existing Revolver, the Existing First Lien Facility or the Existing Second Lien Facility (2) as are disclosed on Schedule [] hereto or (3) as required by their terms as in effect on the date of this Agreement of claims, liabilities or obligations reflected or reserved against in the financial statements (or the notes thereto) of the Company (for amounts not in excess of such reserves) or incurred since the date of such financial statements in the ordinary course of business consistent with past practice, (B) cancel any material indebtedness except as disclosed on Schedule [] or (C) waive, release, grant or transfer any right of material value;

(x) terminate or cancel any material contract other than in the ordinary course of business;

(xi) except for the In-Court Process, if commenced, and other than in the ordinary course of business consistent with past practice or except for such Actions (as defined below) disclosed on Schedule [], commence, prosecute, compromise or settle any action, appeal, petition, plea, charge, complaint, claim, suit, demand, litigation, arbitration, mediation, hearing, inquiry, investigation or similar event, occurrence, or proceeding (an “**Action**”) by the Company or any of its subsidiaries against any third party (other than an Action as a result of an Action commenced against the Company or any of its subsidiaries) and other than to enforce its rights under this Agreement or the Restructuring Support Agreement;

(xii) change any material financial or material tax accounting methods, principles or practices, except insofar as may have been required by a change in GAAP or applicable law, or revalue any of its material assets;

(xiii) amend, or enter into any new, arrangements, understandings or agreements with any present or former executive officer, director or Affiliate of the Company or any of its subsidiaries, other than as required by the Restructuring Support Agreement;

(xiv) except as contemplated by the Prepackaged Chapter 11 Plan, file a motion in the Bankruptcy Court seeking to (A) reject a material contract or (B) enter into or materially amend or modify or terminate a material contract;

(xv) except commencement of the In-Court Process consistent with the Restructuring Support Agreement, seek to place the Company or any of its subsidiaries into any insolvency, receivership, or bankruptcy process (including but not limited to liquidation and examinership); or

(xvi) commit, or agree to take, any of the foregoing actions.

(f) Access and Information. From the date hereof until the Closing Date, subject to any applicable laws and except for privileged information or information required to held confidential under applicable laws, the Company shall at the Company's expense (i) afford any Purchaser and its representatives access, during regular business hours, upon reasonable advance notice and in a manner as would not be unreasonably disruptive to the normal business or operations of the Company or any of its subsidiaries, to the assets, books and records of the Company and its subsidiaries (including tax work papers and tax returns), (ii) furnish, or cause to be furnished, to the Purchasers any financial and operating data and other information that is available with respect to the Company and its subsidiaries as any Purchaser from time to time reasonably requests and (iii) instruct their respective employees and their and the subsidiaries' legal and financial advisors to cooperate, during regular business hours, with such Purchaser in its investigation of the Company and its subsidiaries; provided that any such information shall be subject to the terms of the Confidentiality Agreement, dated as of _____ and further amended and restated from time to time, between ABC Ltd. and Fund I.

(g) Competing Proposals. Until the earlier of the termination of this Agreement and the Closing Date, the Company shall and shall cause its representatives, advisors and agents to, (A) cease and cause to be terminated any ongoing solicitation, discussions and negotiations with respect to any alternative proposal other than the Qualified Out-of-Court Transaction and the Approved Plan and (B) not, directly or indirectly, seek, solicit, negotiate, support, engage, initiate or participate in discussions relating to, or enter into any agreements relating to, any alternative proposal other than the Qualified Out-of-Court Transaction or the Approved Plan, nor shall the Company or its representatives, advisors or agents solicit or direct any person or entity, including, without limitation, any member of the Company's board of managers (or equivalent) or any holder of equity in the Company, to undertake any of the foregoing; provided that nothing herein shall limit the Company's ability to receive alternative proposals or take such other actions as are necessary to comply with its fiduciary duties which exist and cannot be waived under applicable law (provided that the Company shall, within 1 business day of receipt or transmission, provide the Purchasers' Representative with any documents, proposals or summaries of communications to or from any persons or entities relating to any such discussions or negotiations).

(h) In-Court Process. In the event of an In-Court Process, the Company (1) will cause, by the time such In-Court Process is commenced, the Company and each of its subsidiaries, as applicable, to have the requisite power and authority to file the Prepackaged Chapter 11 Plan with the Bankruptcy Court and, subject to entry of the Confirmation Order and the expiration, or waiver by the Bankruptcy Court, of the fourteen-day period set forth in Bankruptcy Rule 3020(e), to perform its obligations thereunder, and (2) will take all necessary actions required for the due authorization and performance by it and its subsidiaries, as applicable, of the Prepackaged Chapter 11 Plan by the Closing Date.

6. Termination. This Agreement may be terminated at any time prior to the Closing Date as follows:

(a) By mutual written consent of the Company and the Purchasers' Representative;

(b) By the Purchasers' Representative, upon written notice given to the Company if the Company shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would result in the impossibility of a condition set forth in Section 4(a) to be satisfied by the then-relevant termination date in the Restructuring Support Agreement and (ii) cannot be cured within three (3) Business Days after the Purchasers' Representative provides written notice to the Company of such breach (in which event upon failure to so cure within such time period); or

(c) Automatically, upon the termination of the Restructuring Support Agreement.

Upon the termination of this Agreement in accordance with and pursuant to this Section 6, this Agreement shall forthwith become void and of no further force or effect, each Party hereto shall be released from its commitments, undertakings and agreements under or related to this Agreement, and there shall be no liability or obligation on the part of any Party hereto; provided, however, that (i) in no event shall any such termination relieve a Party hereto from liability for its breach or non-performance of its obligations hereunder prior to the date of such termination, notwithstanding any termination of this Agreement by any other Party, and (ii) Sections 8, 10, 12, 16 and 17 shall survive any termination of this Agreement; and provided, further that, notwithstanding anything to the contrary herein, any termination event may be waived in accordance with the procedures established by Section 14 hereof, in which case the termination event so waived shall be deemed not to have occurred, this Agreement shall be deemed to continue in full force and effect, and the rights and obligations of the Parties hereto shall be restored, subject to any modification set forth in such waiver. Upon the termination of this Agreement, the fees and expense reimbursements required by Section 2(b)(iii) hereof shall be payable for work through the termination date. For the avoidance of doubt, the automatic stay arising pursuant to Section 362 of the Bankruptcy Code in the event the Chapter 11 Cases are commenced shall be deemed waived or modified for purposes of providing notice or exercising rights hereunder.

7. No Survival. The Company and the Purchasers agree and acknowledge that the representations and warranties set forth in this Agreement shall not survive Closing.

8. Indemnification. Subject, in the case of an In-Court Process, to entry of the Agreement Approval Order, the Company and its subsidiaries, jointly and severally, (each, an "**Indemnifying Party**") shall indemnify, defend, and hold harmless each Purchaser and each of such Purchaser's Affiliates, officers, directors, members, managers, partners, stockholders, employees, attorneys, advisors, agents, and other representatives and any Affiliate of the foregoing, and each of their respective successors and permitted assigns (each, an "**Indemnified Party**") from and against, and shall promptly reimburse each Indemnified Party for, any and all losses, damages, liabilities, claims, costs, and expenses, including, interest, court costs, and reasonable attorneys' fees and expenses relating to, arising out of, resulting from or in connection with (a) any breach or inaccuracy of the representations contained in Section 3(a), (b) any breach or violation by the Company or its subsidiaries of their covenants and agreements set forth in this Agreement, and (c) any such action, suit, or proceeding by a third-party arising out of or related to this Agreement or the Transactions contemplated hereby (collectively,

“**Indemnified Liabilities**”); provided that, nothing herein shall be deemed to obligate the Company or any of its subsidiaries to indemnify, defend or hold any Indemnified Party harmless of, from or against any losses, damages, liabilities, claims, costs, and expenses, including interest, court costs, attorneys’ fees or expenses relating thereto, to the extent that they are finally judicially determined to have resulted from the fraud, gross negligence or willful misconduct of such Indemnified Party. The indemnification rights provided pursuant to this Section 8 shall terminate in all respects on the Closing Date (or the effective date of an Approved Plan), and from and after such Closing Date or effective date no Indemnified Party shall have such indemnification rights hereunder, regardless of whether or not any Indemnified Liabilities have already arisen.

9. Notices.

(a) All notices, requests, and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile or electronic mail transmission, by nationally recognized overnight courier or mailed (first class postage prepaid) to the parties at the following addresses or facsimile numbers.

If to Purchasers:

To the address set forth beneath Purchaser’s signature to this Agreement

-- and --

If to the Company:

with a copy (which shall not constitute notice) to:

(b) All such notices, requests and other communications shall be deemed to have been received (i) in the case of personal delivery or delivery by facsimile or electronic mail, on the date of such delivery, (ii) in the case of dispatch by nationally recognized overnight courier, on the next Business Day following such dispatch and (iii) in the case of mailing, on the fifth Business Day after the posting thereof.

10. Successors and Assigns; Assignment; Severability; Several Obligations. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors, assigns, heirs, executors, estates, administrators and representatives. Any Purchaser may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder without the consent of any other party hereto, to any of its Affiliates or any entity or person over which such Purchaser or any of its Affiliates exercises investment authority, including with respect to voting and dispositive rights, but such assignment, delegation or transfer shall not modify or eliminate obligations of such Purchaser hereunder. Neither the Company nor any of its subsidiaries may assign, delegate, or otherwise transfer this Agreement or any of their rights or obligations hereunder without the consent of Purchasers, and any purported assignment in violation of this Section 10 shall be null and void *ab initio* without limiting any other remedies available to the other parties hereto. This Agreement is intended for the benefit of the parties hereto and no other person or entity shall be a third party beneficiary hereof or have any rights hereunder. The invalidity or unenforceability at

any time of any provision hereof in any jurisdiction shall not affect or diminish in any way the continuing validity and enforceability of the remaining provisions hereof or the continuing validity and enforceability of such provision in any other jurisdiction. The agreements, representations and obligations of the Purchasers under this Agreement are, in all respects, several and not joint.

11. Entire Agreement. This Agreement, including the recitals hereto and the Index of Defined Terms, other definitive documents entered into as part of the Transactions, and the Restructuring Support Agreement contain the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all prior agreements (oral and written) and all other prior negotiations, with respect to such subject matter; provided, however, that the parties acknowledge and agree that any confidentiality agreements heretofore executed between the Company and any Purchaser or Affiliate of any Purchaser shall continue in full force and effect as provided therein. In the event of any conflict between this Agreement and the Restructuring Support Agreement, the terms of this Agreement will control to the extent of such conflict as between the Company and the Purchasers and nothing herein shall limit or otherwise modify the rights of any other party to the Restructuring Support Agreement.

12. Interpretation and Construction. For purposes of this Agreement, (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, any reference in this Agreement made to an Article, Section, Exhibit, Annex or Schedule refers to an Article or Section of, or Exhibit, Annex or Schedule to, this Agreement; (e) unless otherwise stated, the words “herein,” “hereof” and “hereto” refer to this Agreement in its entirety rather than to a particular portion of this Agreement; and (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof.

13. Amendments. This Agreement, including the Exhibits hereto, may be amended only upon written approval of each Purchaser and the Company, and, to the extent required, the approval of the Bankruptcy Court.

14. Extensions; Waivers. Any party may, for itself only, (a) extend the time for the performance of any of the obligations of any other party under this Agreement, (b) waive any inaccuracies in the representations and warranties of any other party contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any such extension or waiver will be valid only if set forth in a writing signed by the party to be bound thereby. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights

arising because of any prior or subsequent such occurrence. Neither the failure nor any delay on the part of any party to exercise any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same agreement. Execution copies of this Agreement may be delivered by facsimile, electronic mail or otherwise, each of which shall be deemed to be an original for the purposes of this paragraph.

16. Non-Recourse. No past, present or future manager, director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney or representative of party hereto or any Affiliate of any party hereto shall have any liability for any obligations or liabilities of such party (or, in the case of a Purchaser) any other Purchaser under this Agreement, or for any claim based on, in respect of, or by reason of, the Transactions contemplated hereby.

17. Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, without giving effect to the principles of conflict of laws that would require the application of the law of any other jurisdiction. By its execution and delivery of this Agreement, each of the Parties hereto hereby irrevocably and unconditionally agrees for itself that any legal action, suit or proceeding against it with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, may be brought in either a state or federal court of competent jurisdiction in the State and County of New York. By execution and delivery of this Agreement, each of the Parties hereto hereby irrevocably accepts and submits itself to the nonexclusive jurisdiction of each such court, generally and unconditionally, with respect to any such action, suit or proceeding. Notwithstanding the foregoing consent to jurisdiction in either a state or federal court of competent jurisdiction in the State and County of New York, upon the commencement of the Chapter 11 Cases, each of the Parties hereto hereby agrees that, if the petitions have been filed and the Chapter 11 Cases are pending, the Bankruptcy Court shall have exclusive jurisdiction over all matters arising out of or in connection with this Agreement. EACH PARTY HERETO UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Backstop Agreement as of the date first written above.

[COMPANY]

By:_____

Name:_____

Title:_____

Signature page to Backstop Agreement

23639418v2

[PURCHASER 1]

By: _____

Name: _____

Title: _____

[PURCHASER 2]

By: _____

Name: _____

Title: _____

[PURCHASER 3]

By: _____

Name: _____

Title: _____

[PURCHASER 4]

By: _____

Name: _____

Title: _____

Address:

With a copy to:

Schedule 1**Purchaser Allocation**

<u>Purchaser</u>	<u>Proportionate Share of the Amount of Unsubscribed New Equity Offered in the Rights Offering Transaction</u>
[Purchaser 1]	[]%
[Purchaser 2]	[]%
[Purchaser 3]	[]%
[Purchaser 4]	<u>[]%</u>
<u>Total</u>	<u>100%</u>

Index of Defined Terms

“Affiliate” means, with respect to any person or entity, any person or entity directly or indirectly controlling, controlled by or under common control with, such other person or entity. For purposes of this definition, “control” when used with respect to any person or entity, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such person, whether through the ownership of voting securities, by contract, or otherwise.

“Business Day” means any calendar day that is not a Saturday, Sunday or other calendar day on which banks are required or authorized to be closed in the City of New York.

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

“Commission” means the United States Securities and Exchange Commission.

“Company Benefit Plan” means any plan, program, arrangement or agreement that is a pension, profit-sharing, savings, retirement, employment, consulting, severance pay, termination, executive compensation, incentive compensation, deferred compensation, bonus, stock purchase, stock option, phantom stock or other equity-based compensation, change-in-control, retention, salary continuation, vacation, sick leave, disability, death benefit, group insurance, hospitalization, medical, dental, life (including all individual life insurance policies as to which the Company or any of its subsidiaries is the owner, the beneficiary, or both), “cafeteria” or “flexible” benefit, employee loan, educational assistance or fringe benefit plan, program, arrangement or agreement, whether written or oral) other employee benefit plans, agreements, programs, policies, arrangements or payroll practices, whether or not subject to ERISA (including any funding mechanism therefore now in effect or required in the future as a result of the Transactions or otherwise) under which any current or former officer, director, employee, leased employee, consultant or agent (or their respective beneficiaries) of the Company or any of its subsidiaries has any present or future right to benefits or to which the Company could have any Liability.

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

“ERISA Affiliate” means, with respect to the Company, any trade or business (whether or not incorporated) that, together with the Company, is treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the Code.

“ERISA Plan” means at any time, an “employee benefit plan,” as defined in Section 3(3) of ERISA, that the Company or ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by the Company.

“GAAP” means the generally accepted accounting principles in the United States.

“Governance Documents” means, the memorandum and articles of association of NewCo, as provided in the Restructuring Support Agreement.

“Governmental Authority” means (a) any court, tribunal, judicial or arbitral body and (b) any government, multilateral organization or international organization or any agency, bureau, board, commission, ministry, authority, department, official, political subdivision or other instrumentality thereof, whether federal, state or local, domestic or foreign as well as any Persons owned or chartered by any of the foregoing.

“knowledge of the Company” means the knowledge (after due inquiry) of the following individuals: [].

“Liability” means any liability or obligation of any kind, whether accrued, absolute, fixed or contingent or otherwise, whether known or unknown.

“Lien” means any charge, security interest, community property interest, condition, equitable interest, lien, option, pledge, mortgage, right of way, easement, encroachment, servitude, right of first offer, right of first refusal or contractual restriction of any kind, including any restriction or covenant with respect to use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Material Adverse Effect” shall mean any change, effect, event, occurrence, development, circumstance, or state of facts which, either alone or in combination, has had or would reasonably be expected to have a materially adverse effect on the business, properties, operations, financial condition or results of operations of the Company and its subsidiaries taken as a whole, or which would reasonably be expected to materially impair its or their ability to perform its or their obligations under this Agreement or have a materially adverse effect on or prevent or materially delay the consummation of the Transactions contemplated by this Agreement, the Support Agreement or the Offering Memorandum, provided that none of the following shall be taken into account in determining whether there has been a Material Adverse Effect: any adverse change, effect, event, occurrence, development, circumstance, or state of facts to the extent attributable to: (a) conditions affecting the U.S. economy as a whole; (b) the commencement, continuation or escalation of a war, civil unrest, material armed hostilities or other material international or national calamity or act of terrorism; (c) actions and omissions of the Company taken with prior express written consent of the Purchasers in contemplation of the Transactions; (d) conditions generally affecting the industry in which the Company participates; (e) any changes in laws of general applicability to companies in the same industry as the Company; (f) changes in GAAP; which, in the case of any of the foregoing clauses (a) – (f) does not disproportionately affect the Company relative to other companies in the industry in which it operates; or (g) in the event the Company or its subsidiaries commence the In-Court Process, (i) the filing of the Chapter 11 Cases and (ii) those events which are customary and foreseeable following the commencement of a proceeding under Chapter 11 of the Bankruptcy Code.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA, and to which the Company or ERISA Affiliate is making, is obligated to make or has made or been obligated to make, contributions on behalf of participants who are or were employed by any of them.

“Pension Plan” means an ERISA Plan described in Section 3(2) of ERISA.

“**Person**” means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

“**Retiree Welfare Plan**” means, at any time, a Welfare Plan that provides for continuing coverage or benefits for any participant or any beneficiary of a participant after such participant’s termination of employment, other than continuation coverage provided pursuant to Section 4980B of the Code and at the sole expense of the participant or the beneficiary of the participant.

“**Title IV Plan**” means a Pension Plan (other than a Multiemployer Plan), that is covered by Title IV of ERISA, and that the Company or ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any of them.

“**Welfare Plan**” means an ERISA Plan described in Section 3(l) of ERISA.

<u>Term</u>	<u>Section</u>
Action	Section 5(h)(xi)(A)
Agreement	Preamble
Agreement Approval Order	Section 2(b)(iii)
Bankruptcy Rules	Section 3(a)(iv)(A)
Closing	Section 2(a)
Closing Date	Section 2(a)
Commitment	Section 1
Confirmation Order	Section 5(b)
Company	Preamble
Company Assets	Section 3(a)(viii)
Company Disclosure Schedules	Section 3(a)
Expenses	Section 2(b)(iii)
In-Court Process	Recitals
Indemnified Liabilities	Section 8
Indemnified Party	Section 8
Indemnifying Party	Section 8
Litigation	Section 3(a)(ix)
Offering Memorandum	Recitals
Plan	Recitals
Petition Date	Recitals
Purchase Price	Section 1
Purchaser	Preamble
Purchasers’ Representative	Section 4(a)
Related Party	Section 3(a)(xix)(B)
Securities Act	Section 3(a)(xi)
Restructuring Support Agreement	Recitals

Transactions

Recitals

First Lien/Second Lien Intercreditor Agreement

[First Lien Agent]

[Second Lien Agent]

[Control Agent]

[Borrower]

[Holdings]

[Guarantor Subsidiaries]

[date]

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[date]

PREAMBLE

PARTIES

- _____, as collateral agent for the holders of the First Lien Obligations defined below (in such capacity, *First Lien Agent*)
- _____, as collateral agent for the holders of the Second Lien Obligations defined below (in such capacity, *Second Lien Agent*)
- _____, as control agent for First Lien Agent and Second Lien Agent (in such capacity, the *Control Agent*)
- _____, (*Borrower*)
- _____, (*Holdings*)
- The Guarantor Subsidiaries (as defined below).

BACKGROUND

Borrower, Borrower's parent company, Holdings, certain lenders and agents, and First Lien Agent have entered into a *First Lien Credit Agreement* dated the date hereof providing for a revolving credit facility and term loan.

Borrower, Holdings, certain lenders and agents, and Second Lien Agent have entered into a *Second Lien Credit Agreement* dated the date hereof providing for a term loan.

Holdings has guaranteed, and Holdings and Borrower have agreed to cause certain current and future Subsidiaries of Borrower [and Holdings] (the *Guarantor Subsidiaries*) to guarantee, Borrower's Obligations under the First Lien Credit Agreement and the Second Lien Credit Agreement.

Each of Borrower, Holdings, each Guarantor Subsidiary, and each other Person that executes and delivers a First Lien Collateral Document or a Second Lien Collateral Document as a "grantor" or "pledgor" (or the equivalent) is a *Grantor*.

A Grantor may enter into Hedge Agreements and Cash Management Agreements with one or more lenders under the First Lien Credit Agreement or their affiliates as counterparties, which may be included in the First Lien Obligations defined below. The First Lien Obligations and the Second Lien Obligations are secured by Liens on substantially all the assets of Borrower, Holdings, and the Guarantor Subsidiaries.

The Parties desire to set forth in this First Lien/Second Lien Intercreditor Agreement (this *Agreement*) their rights and remedies with respect to the Collateral securing the First Lien Obligations and the Second Lien Obligations.

AGREEMENT

1 LIEN PRIORITIES

1.1 SENIORITY OF LIENS SECURING FIRST LIEN OBLIGATIONS

- (a) A Lien on Collateral securing any First Lien Obligation that is included in the Capped Obligations up to but not in excess of the First Lien Cap will at all times be senior and prior in all respects to a Lien on such Collateral securing any Second Lien Obligation, and a Lien on Collateral securing any Second Lien Obligation will at all times be junior and subordinate in all respects to a Lien on such Collateral securing any First Lien Obligation that is included in the Capped Obligations up to but not in excess of the First Lien Cap.
- (b) A Lien on Collateral securing any First Lien Obligation that is not included in the Capped Obligations will at all times be senior and prior in all respects to a Lien on such Collateral securing any Second Lien Obligation, and a Lien on Collateral securing any Second Lien Obligation will at all times be junior and subordinate in all respects to a Lien on such Collateral securing any First Lien Obligation that is not included in the Capped Obligations.
- (c) The Lien on Collateral securing any First Lien Obligation that is included in the Capped Obligations in excess of the First Lien Cap will have the priority set forth in section 1.11, “*Subordination of Liens Securing Excess First Lien Obligations.*”
- (d) Except as otherwise expressly provided herein, the priority of the Liens securing First Lien Obligations and the rights and obligations of the Parties will remain in full force and effect irrespective of
 - (1) how a Lien was acquired (whether by grant, possession, statute, operation of law, subrogation, or otherwise),
 - (2) the time, manner, or order of the grant, attachment, or perfection of a Lien,
 - (3) any conflicting provision of the U.C.C. or other applicable law,
 - (4) any defect in, or non-perfection, setting aside, or avoidance of, a Lien or a First Lien Loan Document or a Second Lien Loan Document,
 - (5) the modification of a First Lien Obligation or a Second Lien Obligation,
 - (6) the modification of a First Lien Loan Document or a Second Lien Loan Document,
 - (7) the subordination of a Lien on Collateral securing a First Lien Obligation to a Lien securing another obligation of a Grantor or other

Person that is permitted under the First Lien Loan Documents as in effect on the date hereof or secures a DIP Financing deemed consented to by the Second Lien Claimholders pursuant to section 6.1, “*Use of Collateral and DIP Financing*.”

- (8) the exchange of a security interest in any Collateral for a security interest in other Collateral,
- (9) the commencement of an Insolvency Proceeding, or
- (10) any other circumstance whatsoever, including a circumstance that might be a defense available to, or a discharge of, a Grantor in respect of a First Lien Obligation or a Second Lien Obligation or holder of such Obligation.

[ALTERNATIVE SECTION FAVORABLE TO SECOND LIEN LENDERS]

[1.1 SENIORITY OF LIENS SECURING FIRST LIEN OBLIGATIONS

- (e) A Lien on Collateral securing any First Lien Obligation that is included in the Capped Obligations up to but not in excess of the First Lien Cap will at all times be senior and prior in all respects to a Lien on such Collateral securing any Second Lien Obligation, and a Lien on Collateral securing any Second Lien Obligation will at all times be junior and subordinate in all respects to a Lien on such Collateral securing any First Lien Obligation that is included in the Capped Obligations up to but not in excess of the First Lien Cap so long as the Lien securing the First Lien Obligations is valid, perfected, [and unavoidable] [and is not avoided in an Insolvency Proceeding].
- (f) A Lien on Collateral securing any First Lien Obligation that is not included in the Capped Obligations will at all times be senior and prior in all respects to a Lien on such Collateral securing any Second Lien Obligation, and a Lien on Collateral securing any Second Lien Obligation will at all times be junior and subordinate in all respects to a Lien on such Collateral securing any First Lien Obligation that is not included in the Capped Obligations so long as the Lien securing the First Lien Obligations is valid, perfected, [and unavoidable] [and is not avoided in an Insolvency Proceeding].
- (g) The Lien on Collateral securing any First Lien Obligation that is included in the Capped Obligations in excess of the First Lien Cap will have the priority set forth in section 1.11, “*Subordination of Liens Securing Excess First Lien Obligations*.”

- (h) Except as otherwise expressly provided herein, the priority of the Liens securing First Lien Obligations and the rights and obligations of the Parties will remain in full force and effect irrespective of
 - (1) how a Lien was acquired (whether by grant, possession, statute, operation of law, subrogation, or otherwise),
 - (2) the time, manner, or order of the grant, attachment, or perfection of a Lien,
 - (3) any conflicting provision of the U.C.C. or other applicable law,
 - (4) the modification of a First Lien Obligation or a Second Lien Obligation,
 - (5) the modification of a First Lien Loan Document or a Second Lien Loan Document,
 - (6) the subordination of a Lien on Collateral securing a First Lien Obligation to a Lien securing another obligation of a Grantor or other Person that is permitted under the First Lien Loan Documents as in effect on the date hereof or secures a DIP Financing deemed consented to by the Second Lien Claimholders pursuant to Section 6.1, “*Use of Collateral and DIP Financing*,”
 - (7) the exchange of a security interest in any Collateral for a security interest in other Collateral, or
 - (8) the commencement of an Insolvency Proceeding.]

[END OF ALTERNATIVE SECTION]

1.2 NO PAYMENT SUBORDINATION

The subordination of Liens securing Second Lien Obligations to Liens securing First Lien Obligations set forth in the preceding section 1.1 affects only the relative priority of those Liens, and does not subordinate the Second Lien Obligations in right of payment to the First Lien Obligations. Nothing in this Agreement will affect the entitlement of any Second Lien Claimholder to receive and retain required payments of interest, principal, and other amounts in respect of a Second Lien Obligation unless the receipt is expressly prohibited by, or results from the Second Lien Claimholder’s breach of, this Agreement.

1.3 FIRST LIEN OBLIGATIONS AND SECOND LIEN OBLIGATIONS

- (a) *First Lien Obligations* means all Obligations of the Grantors under
 - (1) the First Lien Credit Agreement and the other First Lien Loan Documents,

- (2) the guaranties by Holdings and the Guarantor Subsidiaries of the Borrower's Obligations under the First Lien Loan Documents,
- (3) any Hedge Agreement entered into with an agent or a lender (or an Affiliate thereof) under the First Lien Credit Agreement (even if the counterparty or an Affiliate of the counterparty ceases to be an agent or a lender under the First Lien Credit Agreement),
- (4) any Cash Management Agreement, or
- (5) any other agreement or instrument granting or providing for the perfection of a Lien securing any of the foregoing.

Notwithstanding any other provision hereof, the term "*First Lien Obligations*" will include accrued interest, fees, costs, and other charges incurred under the First Lien Credit Agreement and the other First Lien Loan Documents, whether incurred before or after commencement of an Insolvency Proceeding, and whether or not allowable in an Insolvency Proceeding. To the extent that any payment with respect to the First Lien Obligations (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential in any respect, set aside, or required to be paid to a debtor in possession, trustee, receiver, or similar Person, then the obligation or part thereof originally intended to be satisfied will be deemed to be reinstated and outstanding as if such payment had not occurred.

[ALTERNATIVE DEFINITION MORE FAVORABLE TO SECOND LIEN LENDERS]

- [(a) *First Lien Obligations* means all Obligations of the Grantors under
- (1) the First Lien Credit Agreement and the First Lien Loan Documents,
 - (2) the guaranties by Holdings and the Guarantor Subsidiaries of the Borrower's Obligations under the First Lien Loan Documents,
 - (3) any Hedge Agreement entered into with an agent or a lender (or an Affiliate thereof) under the First Lien Credit Agreement (even if the counterparty or an Affiliate of the counterparty ceases to be an agent or a lender under the First Lien Credit Agreement),
 - (4) any Cash Management Agreement, or
 - (5) any other agreement or instrument granting or providing for the perfection of a Lien securing any of the foregoing, except that such Obligations will only be considered First Lien Obligations to the extent

- (i) they are secured by a valid, perfected, and unavoidable Lien on the Collateral in favor of First Lien Agent, and
- (ii) a claim for such Obligations would be allowed or allowable in an Insolvency Proceeding applicable to the relevant Grantor.]

[END OF ALTERNATIVE DEFINITION]

- (b) *Second Lien Obligations* means all Obligations of the Grantors under
- (1) the Second Lien Credit Agreement and the other Second Lien Loan Documents,
 - (2) the guaranties by Holdings and the Guarantor Subsidiaries of Borrower's Obligations under the Second Lien Loan Documents,
 - (3) any Hedge Agreement entered into with an agent or a lender (or an Affiliate thereof) under the Second Lien Credit Agreement if such agent or lender is not an agent or lender under the First Lien Credit Agreement (even if the counterparty or an Affiliate of the counter-party ceases to be an agent or a lender under the Second Lien Credit Agreement),
 - (4) any agreement or instrument granting or providing for the perfection of a Lien securing any of the foregoing[, except that the aggregate principal amount of the Second Lien Obligations (other than Obligations under Hedge Agreements or Cash Management Agreements) in excess of the Second Lien Cap (as defined below) will not be Second Lien Obligations].

Notwithstanding any other provision hereof, the term “*Second Lien Obligations*” will include accrued interest, fees, costs, and other charges incurred under the Second Lien Credit Agreement and the other Second Lien Loan Documents, whether incurred before or after commencement of an Insolvency Proceeding[, and whether or not allowable in an Insolvency Proceeding].

- (c) The inclusion of Obligations under Hedge Agreements in the First Lien Obligations will not create in favor of the applicable counterparty any rights in connection with the management or release of any Collateral or of the Obligations of any Grantor under any First Lien Collateral Document, and the inclusion of Obligations under Hedge Agreements in the Second Lien Obligations will not create in favor of the applicable counterparty any rights in connection with the management or release of any Collateral or of the Obligations of any Grantor under any Second Lien Collateral Document.

- (d) First Lien Agent and the holders of First Lien Obligations are, together, the *First Lien Claimholders*. Second Lien Agent and the holders of Second Lien Obligations are, together, the *Second Lien Claimholders*.

1.4 FIRST LIEN CAP

Capped Obligations means First Lien Obligations for the payment of principal of Loans and reimbursement obligations in respect of Letters of Credit [, Obligations under Interest Rate Protection Agreements,] and interest, premium, if any, and fees accruing or payable in respect thereof or in respect of commitments therefor.

First Lien Cap means the sum of

- (a) the excess of
 - (1) the aggregate principal amount of First Lien Obligations (including the undrawn amount of all letters of credit constituting First Lien Obligations (*Letters of Credit*) and the aggregate original principal amount of any term loan that is a First Lien Obligation but excluding First Lien Obligations under Hedge Agreements) up to, but not in excess of, \$_____, over
 - (2) the sum of (A) principal payments applied to term loans that are First Lien Obligations, (B) permanent reductions of revolving credit loans (and accompanying commitments) under the revolving credit facility provided for in the First Lien Credit Agreement, and (C) reimbursements of drawings under Letters of Credit constituting First Loan Obligations to the extent that any such reimbursement results in a permanent reduction of the Letter of Credit commitment amount under the First Lien Loan Documents, excluding reductions resulting from a Refinancing, plus
- (b) amounts in respect of accrued, unpaid interest, fees, and premium (if any), in each case above accruing in respect of or attributable to, but only in respect of or attributable to, the aggregate principal amount of First Lien Obligations (including the undrawn amount of all Letters of Credit constituting First Lien Obligations and the aggregate original principal amount of any term loan that is a First Lien Obligation) at any one time not to exceed the amount referred to in clause (a) above, *provided* that the First Lien Cap shall not apply to any First Lien Obligations other than Capped Obligations[, and plus
- (c) [Obligations owing by Grantors to First Lien Claimholders under non-speculative Hedge Agreements] [Obligations owing by Grantors to First Lien Claimholders under Interest Rate Protection Agreements designed to protect a

Grantor against fluctuations in interest rates on an aggregate principal amount of First Lien Obligations (including the undrawn amount of all Letters of Credit constituting First Lien Obligations and the aggregate original principal amount of any term loan that is a First Lien Obligation) at any one time not to exceed the amount referred to in clause (a) above, plus amounts in respect of accrued, unpaid interest on such Obligations,], plus

- (d) the aggregate amount of all Second Lien Adequate Protection Payments to the extent paid from a DIP financing or Proceeds of Collateral [, and
- (e) if there is an Insolvency Proceeding, \$_____].

[ALTERNATIVE DEFINITION OF FIRST LIEN CAP FOR FIRST LIEN LOANS INVOLVING A BORROWING BASE]

[*First Lien Cap* means the excess of

- (f) the sum of (1) the aggregate principal amount of First Lien Obligations (including the undrawn amount of all letters of credit constituting First Lien Obligations (*Letters of Credit*) but excluding for purposes of this section (a) only the principal amount of any term loan that is a First Lien Obligation and any First Lien Obligations under Hedge Agreements) up to, but not in excess of, the lesser of (A) \$_____, and (B) [110%] of Availability as determined by First Lien Agent at the time each principal amount is made, issued, or otherwise incurred, plus (2) the aggregate original principal amount of any term loan that is a First Lien Obligation, over
- (g) the sum of (1) the aggregate amount of all payments of the principal of any term loan included in the First Lien Obligations, and (2) the amount of all payments of revolving loans or reimbursements of drawings under Letters of Credit that permanently reduce the accompanying revolving credit commitment or letter of credit commitment amount under the First Lien Credit Agreement (excluding reductions in sub-facility commitments not accompanied by a corresponding permanent reduction in the revolving facility or letters of credit commitment amount, excluding reductions under (A) and (B) as a result of a Refinancing, and *provided* that the First Lien Cap shall not apply to any First Lien Obligations other than Capped Obligations)], plus
- (h) [Obligations owing by Grantors to First Lien Claimholders under non-speculative Hedge Agreements] [Obligations owing by Grantors to First Lien Claimholders under Interest Rate Protection Agreements designed to protect a Grantor against fluctuations in interest rates on an aggregate principal amount of First Lien Obligations (including the undrawn amount of all Letters of

Credit constituting First Lien Obligations and the aggregate original principal amount of any term loan that is a First Lien Obligation) at any one time not to exceed the amount referred to in clause (a) above, plus amounts in respect of accrued, unpaid interest on such Obligations,][, plus

- (i) all Second Lien Adequate Protection Payments to the extent paid from any DIP Financing or Proceeds of Collateral,][, plus
- (j) if there is an Insolvency Proceeding, \$_____].]

[END OF ALTERNATIVE DEFINITION]

[ALTERNATIVE DEFINITION MORE FAVORABLE TO SECOND LIEN LENDERS]

Capped Obligations means First Lien Obligations for the payment of principal of Loans and reimbursement obligations in respect of Letters of Credit, and interest, premium, if any, and fees accruing or payable in respect thereof or in respect of commitments therefor [, plus obligations under Interest Rate Protection Agreements in respect of interest on First Lien Principal Obligations not in excess of the First Lien Cap]

[*First Lien Cap* means the sum of

- (k) the excess of (1) the outstanding amount of First Lien Principal Obligations not to exceed in the aggregate [the sum of (x)] \$_____ of term Indebtedness [plus (y) the lesser of (A) [110]% of [Availability] as determined by First Lien Agent at the time each principal amount is made, issued, or otherwise incurred, and (B) \$_____ of revolving credit Indebtedness included in the First Lien Obligations [(including the outstanding undrawn amount of, and reimbursement obligations in respect of, letters of credit constituting First Lien Obligations (*Letters of Credit*))] [(calculated, in the case of any First Lien Principal Obligations issued at a discount, at the aggregate amount due at maturity thereof)], over (2) the aggregate amount of all repayments of term Indebtedness, and all repayments or reductions of revolving credit Indebtedness, included in the First Lien Principal Obligations[, and of reimbursement obligations under Letters of Credit,] (to the extent effected with a corresponding permanent commitment reduction under the First Lien Credit Agreement but excluding reductions as a result of a Refinancing) (First Lien Principal Obligations in excess of the First Lien Cap being the *Excess First Lien Principal Obligations*), plus
- (l) accrued but unpaid interest, commitment, facility, utilization, and other analogous fees and, if applicable, prepayment premiums on the First Lien Principal Obligations referred to in clause (a) above [(at [rates] [interest rate margins] not in excess of __ basis points [or __%] above the [rates] [interest

rate margins] provided for under the First Lien Credit Agreement as in effect on the date hereof)], plus

- (m) all fees, expenses, premium (if any), reimbursement obligations, and other amounts of a type not referred to in clause (a) or (b) above payable in respect of the amounts referred to in clauses (a) and (b) above, [plus
- (n) Obligations under Hedge Agreements in respect of interest on First Lien Principal Obligations referred to in clause (a) above not to exceed \$_____ in the aggregate,] in each case payable pursuant to the First Lien Loan Documents *provided* that the First Lien Cap shall not apply to any First Lien Obligations other than Capped Obligations.

For purposes of this definition, all payments of First Lien Principal Obligations will be deemed to be applied first to reduce the First Lien Principal Obligations referred to in clause (a)(1) above and thereafter to reduce any Excess First Lien Principal Obligations.]

[END OF ALTERNATIVE DEFINITION]

Any net increase in the aggregate principal amount of a loan or Letter of Credit (on a U.S. Dollar equivalent basis) after the loan is incurred or the Letter of Credit issued that is caused by a fluctuation in the exchange rate of the currency in which the loan or Letter of Credit is denominated will be ignored in determining whether the First Lien Cap has been exceeded[, except with respect to the principal amount of First Lien Obligations made, issued, or advanced after the calculation of such fluctuation in exchange rate].

1.5 FIRST AND SECOND LIEN COLLATERAL TO BE IDENTICAL

- (a) The Parties intend that the First Lien Collateral and the Second Lien Collateral be identical, except [specify any exceptions]. Accordingly, subject to the other provisions of this Agreement, the Parties will cooperate
 - (1) to determine the specific items included in the First Lien Collateral and the Second Lien Collateral, the steps taken to perfect the Liens thereon, and the identity of the Persons having First Lien Obligations or Second Lien Obligations, and
 - (2) to make the forms, documents, and agreements creating or evidencing the First Lien Collateral and Second Lien Collateral and the guaranties of the First Lien Obligations and the Second Lien Obligations materially the same, other than with respect to the first and second lien nature of the Liens.

- (b) Until the Discharge of First Lien Obligations, and whether or not an Insolvency Proceeding has commenced, Borrower and Holdings will not grant, and will use their best efforts to prevent any other Person from granting, a Lien on any property
 - (1) in favor of a First Lien Claimholder to secure the First Lien Obligations unless Borrower, Holdings, or such other Person grants (or offers to grant with a reasonable opportunity for the Lien to be accepted) Second Lien Agent a junior Lien on such property to secure the Second Lien Obligations (however, the refusal of Second Lien Agent to accept such Lien will not prevent the First Lien Claimholder from taking the Lien), and
 - (2) in favor of a Second Lien Claimholder to secure the Second Lien Obligations unless Borrower, Holdings, or such other Person grants (or offers to grant with a reasonable opportunity for the Lien to be accepted) First Lien Agent a senior Lien on such property to secure the First Lien Obligations (however, the refusal of First Lien Agent to accept such Lien will not prevent the Second Lien Claimholder from taking the Lien).
- (c) Subject to section 1.1, “*Seniority of Liens Securing First Lien Obligations*,” if a Second Lien Claimholder hereafter acquires a Lien on property to secure a Second Lien Obligation where the property is not also subject to a Lien securing the First Lien Obligations, then such Second Lien Claimholder will give First Lien Agent written notice of such Lien no later than five Business Days after acquiring such Lien. If First Lien Agent also obtains a Lien on such property or if such Second Lien Claimholder fails to provide such timely notice to First Lien Agent, then such property will be deemed to be Collateral for all purposes hereunder.

1.6 PLEDGED COLLATERAL

- (a) If First Lien Agent has any Collateral in its possession or control (such Collateral being the *Pledged Collateral*), then, subject to section 1.1, “*Seniority of Liens Securing First Lien Obligations*,” and this section 1.6, First Lien Agent will possess or control the Pledged Collateral as gratuitous bailee and/or gratuitous agent for perfection for the benefit of Second Lien Agent as secured party, so as to satisfy the requirements of sections 8-106(d)(3), 8-301(a)(2), and 9-313(c) of the U.C.C. In this section 1.6, “control” has the meaning given that term in sections 8-106 and 9-314 of the U.C.C.

- (b) First Lien Agent will have no obligation to any First Lien Claimholder or Second Lien Claimholder to ensure that any Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this section 1.6. The duties or responsibilities of First Lien Agent under this section 1.6 will be limited solely to possessing or controlling the Pledged Collateral as bailee and/or agent for perfection in accordance with this section 1.6 and delivering the Pledged Collateral upon a Discharge of First Lien Obligations as provided in subsection (d) below.
- (c) Second Lien Agent hereby waives and releases First Lien Agent from all claims and liabilities arising out of First Lien Agent's role under this section 1.6 as bailee and/or agent with respect to the Pledged Collateral [except for claims arising by reason of First Lien Agent's gross negligence or willful misconduct].
- (d) Upon the Discharge of First Lien Obligations, First Lien Agent will deliver or transfer control of any Pledged Collateral in its possession or control, together with any necessary endorsements (which endorsements will be without recourse and without any representation or warranty),
 - (1) *first*, to Second Lien Agent if any Second Lien Obligations remain outstanding, and
 - (2) *second*, to Borrower,
 and will take any other action reasonably requested by Second Lien Agent (at the expense of Borrower or, upon default by Borrower in payment or reimbursement thereof, Second Lien Agent) in connection with Second Lien Agent obtaining a first-priority interest in the Pledged Collateral.
- (e) If Second Lien Agent has any Pledged Collateral in its possession or control, then, subject to section 1.1, "*Seniority of Liens Securing First Lien Obligations*," and this section 1.6, Second Lien Agent will possess or control the Pledged Collateral as gratuitous bailee and/or gratuitous agent for perfection for the benefit of First Lien Agent as secured party, so as to satisfy the requirements of sections 8-106(d)(3), 8-301(a)(2), and 9-313(c) of the U.C.C.
- (f) Second Lien Agent will have no obligation to any First Lien Claimholder or Second Lien Claimholder to ensure that any Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this section 1.6. The duties or responsibilities of Second Lien Agent under this section 1.6 will be limited solely to possessing or controlling the Pledged Collateral as bailee and/or agent for perfection in accordance with this section 1.6 and delivering the Pledged Collateral upon a

Discharge of Second Lien Obligations [up to any Second Lien Cap] as provided in subsection (h) below.

- (g) First Lien Agent hereby waives and releases Second Lien Agent from all claims and liabilities arising out of Second Lien Agent's role under this section 1.6 as bailee and/or agent for perfection with respect to the Pledged Collateral [except for claims arising by reason of Second Lien Agent's gross negligence or willful misconduct].
- (h) Upon the Discharge of Second Lien Obligations up to any Second Lien Cap, Second Lien Agent will deliver or transfer control of any Pledged Collateral in its possession or control, together with any necessary endorsements (which endorsements will be without recourse and without any representation or warranty),
 - (1) *first*, to First Lien Agent if any First Lien Obligations remain outstanding, and
 - (2) *second*, to Borrower,

and will take any other action reasonably requested by First Lien Agent (at the expense of the Borrower or, upon default by the Borrower in payment or reimbursement thereof, First Lien Agent) in connection with First Lien Agent obtaining a first-priority interest in the Pledged Collateral.

1.7 LIMITATIONS ON DUTIES AND OBLIGATIONS

- (a) (1) First Lien Agent will be solely responsible for perfecting and maintaining the perfection of its Liens on the First Lien Collateral, and (2) except for First Lien Agent's obligations under section 1.6, "*Pledged Collateral*," Second Lien Agent will be solely responsible for perfecting and maintaining the perfection of its Liens on the Second Lien Collateral.
- (b) This Agreement is intended solely to govern the respective Lien priorities as between First Lien Claimholders and Second Lien Claimholders and does not impose on First Lien Agent or Second Lien Agent any obligations in respect of the disposition of Proceeds of foreclosure on any Collateral that would conflict with a prior perfected claim in favor of another Person, an order or decree of a court or other Governmental Authority, or applicable law.
- (c) Notwithstanding any other provision of this Agreement, First Lien Agent will only be required to verify the payment of, or other satisfactory arrangements with respect to, First Lien Obligations arising under Cash Management Agreements or Hedge Agreements if First Lien Agent receives notice of such

Obligations, together with any supporting documentation First Lien Agent requests, from the applicable Person.

- (d) Except for obligations expressly provided for herein, the Control Agent and First Lien Claimholders will have no liability to any Second Lien Claimholder for any action by a First Lien Claimholder with respect to any First Lien Obligations or Collateral, including
 - (1) the maintenance, preservation, or collection of First Lien Obligations or any Collateral, and
 - (2) the foreclosure upon, or the sale, liquidation, maintenance, preservation, or other disposition of, any Collateral.
- (e) First Lien Agent will not have by reason of this Agreement or any other document a fiduciary relationship with any First Lien Claimholder or Second Lien Claimholder. The parties recognize that the interests of First Lien Agent and Second Lien Agent may differ, and First Lien Agent may act in its own interest without taking into account the interests of any Second Lien Claimholder.

1.8 PROHIBITION ON CONTESTING LIENS; NO MARSHALING

- (a) First Lien Agent will not contest in any proceeding (including an Insolvency Proceeding) the validity, enforceability, perfection, or priority of any Lien securing a Second Lien Obligation, but nothing in this section 1.8 will impair the rights of any First Lien Claimholder to enforce this Agreement, including the priority of the Liens securing the First Lien Obligations or the provisions for exercise of remedies.
- (b) Second Lien Agent will not contest in any proceeding (including an Insolvency Proceeding) the validity, enforceability, perfection, or priority of any Lien securing a First Lien Obligation up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations, but nothing in this section 1.8 will impair the rights of any Second Lien Claimholder to enforce this Agreement, including the priority of the Liens securing the Second Lien Obligations or the provisions for exercise of remedies.
- (c) Until the Discharge of First Lien Obligations, Second Lien Agent will not assert any marshaling, appraisal, valuation, or other similar right that may otherwise be available to a junior secured creditor.

[ADDITIONAL SECTIONS MORE FAVORABLE TO SECOND LIEN LENDERS]

- [(d) The assertion in any proceeding (including an Insolvency Proceeding) or otherwise by one Party (Party A) of the invalidity or nonperfection of the other Party's (Party B's) security interest as a defense to a claim or assertion by Party B against Party A for or alleging breach of this Agreement arising out of Party A's exercise or assertion of claims or other rights or enforcement of remedies under this Agreement or any First Lien Loan Documents or Second Lien Loan Documents, as applicable, will not be a "contest" for purposes of this section 1.8.
- (e) A Second Lien Claimholder who intends to assert a claim or exercise a right or remedy that would violate this Agreement but for the invalidity or nonperfection of the Lien purporting to secure First Lien Obligations will give First Lien Agent at least five Business Days' prior notice of the contemplated action, stating the basis for the claimant's belief that the invalidity or nonperfection exists.
- (f) No First Lien Claimholder or Second Lien Claimholder will assert a claim that challenges the perfection or validity of a Lien or Indebtedness of another Claimholder that is based on allegations
 - (1) of fraudulent conveyance, unlawful payment of distributions to equity holders, or other like allegations, or
 - (2) that could be asserted with comparable merit against Liens, interests, or rights of the Person asserting the claim.]

[END OF ADDITIONAL SECTIONS]

1.9 CONFIRMATION OF SUBORDINATION IN SECOND LIEN COLLATERAL DOCUMENTS

Borrower will cause each Second Lien Collateral Document to include the following language (or language to similar effect approved by First Lien Agent) and any other language First Lien Agent reasonably requests to reflect the subordination of the Lien:

Notwithstanding anything herein to the contrary, the Lien and security interest granted to Second Lien Agent pursuant to this Agreement and the exercise of any right or remedy by Second Lien Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated _____ (as amended, restated, supplemented, or otherwise modified from time to time, the "Intercreditor Agreement"), among _____, as First Lien Agent, _____, as Second Lien Agent, _____, as Control Agent, and the Grantors (as defined therein) from time to time party thereto and other persons party or that may become party thereto from time to time. If there is a conflict between the terms of

the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement will control.

1.10 RELEASE OF LIENS [OR GUARANTIES]

- (a) If First Lien Agent releases a Lien on Collateral[, or releases a Grantor from its Obligations under its guaranty of the First Lien Obligations which guaranty is secured by a Lien on Collateral,] in connection with:

- (1) an Enforcement Action, or
- (2) a Disposition of any Collateral under the First Lien Loan Documents other than pursuant to an Enforcement Action (whether or not there is an event of default under the First Lien Loan Documents),

then any Lien of Second Lien Agent on such Collateral[, and the Obligations of the Grantor under such guaranty of the Second Lien Obligations,] will be, except as otherwise provided below, automatically and simultaneously released to the same extent, and Second Lien Agent will promptly execute and deliver to First Lien Agent [or the Grantor] such termination statements, releases, and other documents as First Lien Agent [or the Grantor] requests to effectively confirm the release, *provided* that such release will not occur without the consent of Second Lien Agent

- (x) for an Enforcement Action, as to any Collateral the net Proceeds of the disposition of which will not be applied to repay (and, to the extent applicable, to reduce permanently commitments with respect to) the First Lien Obligations, or
 - (y) for a Disposition, if the Disposition is prohibited by a provision of the Second Lien Credit Agreement [other than solely as the result of the existence of a default or event of default under the Second Lien Loan Documents].
- (b) Second Lien Agent hereby appoints First Lien Agent and any officer or agent of First Lien Agent, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the place and stead of Second Lien Agent or in First Lien Agent's own name, in First Lien Agent's discretion to take any action and to execute any and all documents and instruments that may be reasonable and appropriate for the limited purpose of carrying out the terms of this section 1.10, including any endorsements or other instruments of transfer or release. This appointment is coupled with an interest and is

irrevocable until the Discharge of First Lien Obligations or such time as this Agreement is terminated in accordance with its terms.

- (c) Until the Discharge of First Lien Obligations, to the extent that First Lien Agent
 - (1) releases a Lien on Collateral or a Grantor from its Obligations under its guaranty, which Lien or guaranty is reinstated, or
 - (2) obtains a new Lien or additional guaranty from a Grantor, then Second Lien Agent will be granted a Lien on such Collateral and an additional guaranty, as the case may be, subject to section 1.1, “*Seniority of Liens Securing First Lien Obligations.*”

1.11 SUBORDINATION OF LIENS SECURING EXCESS FIRST LIEN OBLIGATIONS

- (a) If this Agreement provides for a Second Lien Cap, then all Liens securing Second Lien Obligations up to but not exceeding the Second Lien Cap will be senior in all respects and prior to any Lien on the Collateral securing any Excess First Lien Obligations, as defined below (but only with respect to such excess amounts), and all Liens securing any Excess First Lien Obligations will be junior and subordinate in all respects to any Lien securing a Second Lien Obligation up to but not exceeding the Second Lien Cap. All Liens securing Excess First Lien Obligations will be senior in all respects and prior to any Lien on the Collateral securing any Excess Second Lien Obligations and all Liens securing any Excess Second Lien Obligations will be junior and subordinate in all respects and prior to any Lien securing Excess First Lien Obligations.

Example: Suppose First Lien Obligations are \$150 million, with a First Lien Cap of \$100 million; Second Lien Obligations are \$50 million, with a Second Lien Cap of \$20 million; and the total Collateral has a fair market value of \$175 million. Then First Lien Claimholders will have a first priority Lien on the first \$100 million of Collateral (including Proceeds), Second Lien Claimholders will have a second priority Lien in the next \$20 million of Collateral, First Lien Claimholders will have a third priority Lien in the remaining \$55 million of Collateral up to the \$50 million of Excess First Lien Obligations, and Second Lien Claimholders will have a fourth priority Lien in the remaining \$5 million of Collateral. If all of the Collateral is sold at its fair market value, then the \$175 million in sales proceeds will be sufficient to pay the First Lien Obligations of \$150 million in full and \$25 million of the Second Lien Obligations. See also section 4.1, “Application of Proceeds.”

- (b) If this Agreement provides for a First Lien Cap but does not provide for a maximum limitation of the amount of the Second Lien Obligations (i.e., a

Second Lien Cap), then all Liens securing Second Lien Obligations will be senior in all respects and prior to any Lien on the Collateral securing any Excess First Lien Obligations, as defined below (but only with respect to such excess amounts), and all Liens securing any Excess First Lien Obligations will be junior and subordinate in all respects to any Lien securing a Second Lien Obligation.

Example: Suppose First Lien Obligations are \$150 million, with a First Lien Cap of \$100 million; Second Lien Obligations are \$50 million with no Second Lien Cap; and the total Collateral has a fair market value of \$175 million. Then First Lien Claimholders will have a first priority Lien on the first \$100 million of Collateral (including Proceeds), Second Lien Claimholders will have a second priority Lien in the next \$50 million of Collateral, and First Lien Claimholders will have a third priority Lien on the remaining \$25 million in Collateral. If all of the Collateral is sold at its fair market value, then the \$175 million in sales proceeds will be sufficient to pay \$125 million of the First Lien Obligations of \$150 million and the Second Lien Obligations totaling \$50 million in full. See also section 4.1, "Application of Proceeds."

- (c) *Excess First Lien Obligations* means any First Lien Obligations that are included in the Capped Obligations and that are in excess of the First Lien Cap.
- (d) With respect to the Excess First Lien Obligations and Collateral (including Proceeds),
 - (1) First Lien Claimholders will have rights and obligations (other than the obligations in respect to the Standstill Period) analogous to the rights and obligations Second Lien Claimholders have under this Agreement with respect to the Second Lien Obligations [not in excess of any Second Lien Cap] and the Collateral (including Proceeds), and
 - (2) Second Lien Claimholders will have rights and obligations analogous to the rights and obligations First Lien Claimholders have under this Agreement with respect to the First Lien Obligations that are included in the Capped Obligations and that are not in excess of the First Lien Cap, and the Collateral (including Proceeds).
- (e) Nothing in this section 1.11 will waive any default or event of default under the Second Lien Loan Documents resulting from
 - (1) the incurrence of Obligations under the First Lien Loan Documents in excess of the First Lien Cap with respect to the Capped Obligations, or

- (2) the grant of Liens under the First Lien Collateral Documents securing any such excess amounts,
- or the right of Second Lien Claimholders to exercise any rights and remedies under the Second Lien Loan Documents as a result thereof.

2 MODIFICATION OF OBLIGATIONS

2.1 PERMITTED MODIFICATIONS

Except as otherwise expressly provided in this section 2,

- (a) the First Lien Obligations may be modified in accordance with their terms, and their aggregate amount increased or Refinanced, without notice to or consent by any Second Lien Claimholder, *provided* that the holders of any Refinancing Indebtedness (or their agent) bind themselves in a writing addressed to Second Lien Claimholders to the terms of this Agreement, and
- (b) the Second Lien Obligations may be modified in accordance with their terms, and their aggregate amount increased or Refinanced, without notice to or consent by any First Lien Claimholder, *provided* that the holders of any Refinancing Indebtedness (or their agent) bind themselves in a writing addressed to First Lien Claimholders to the terms of this Agreement.

However, no such modification may alter or otherwise affect sections 1.1, “*Seniority of Liens Securing First Lien Obligations*,” or 1.8, “*Prohibition on Contesting Liens; No Marshaling*.”

2.2 MODIFICATIONS REQUIRING CONSENT

Notwithstanding the preceding section 2.1, [and except as otherwise permitted as DIP Financing provided by the First Lien Lenders and deemed consented to by the Second Lien Lenders pursuant to section 6.1, “*Use of Cash Collateral and DIP Financing*,”] Second Lien Agent must consent to any modification to or Refinancing of the First Lien Obligations, and First Lien Agent must consent to any modification to or Refinancing of the Second Lien Obligations, that:

- (a) increases the aggregate principal amount of loans, letters of credit, bankers acceptances, bonds, debentures, notes, or similar instruments or other similar extensions of credit [(but excluding obligations under Hedge Agreements or Cash Management Agreements) [and, for Second Lien Obligations, any increase resulting from payment of interest in kind permitted under the Second Lien Credit Agreement as in effect on the date hereof]] or commitments therefor beyond

- (1) for the First Lien Obligations, the amount permitted by the First Lien Cap, or
 - (2) for the Second Lien Obligations, the [amount theretofore permitted under the First Lien Credit Agreement] [the amount permitted by the Second Lien Cap];
- (b) increases
 - (1) the interest rate or yield, including by increasing the “applicable margin” or similar component of the interest rate or by modifying the method of computing interest, or
 - (2) a letter of credit, commitment, facility, utilization, or similar fee so that the combined interest rate and fees are increased by more than [_____] % per annum in the aggregate [at any level of pricing], but excluding increases resulting from
 - (A) increases in an underlying reference rate not caused by a modification or Refinancing of such Obligations,
 - (B) accrual of interest at the “default rate” defined in the loan documents at the date hereof or, for a Refinancing, a rate that corresponds to the default rate, or
 - (C) application of a pricing grid set forth in the loan documents at the date hereof;
- (c) for the First Lien Obligations, extends a scheduled amortization payment or the scheduled final maturity date of the First Lien Credit Agreement or a Refinancing beyond the scheduled final maturity date of the Second Lien Credit Agreement or Refinancing;
- (d) for the First Lien Obligations, modifies a mandatory prepayment provision in a manner [prohibited by the Second Lien Credit Agreement] [that allows amounts that would otherwise be required to be used to prepay First Lien Obligations to be retained by the Grantors to an amount greater than permitted under the Second Lien Credit Agreement];
- (e) for the First Lien Obligations, increases the amount of Proceeds of dispositions of Collateral that are not required to be used to prepay First Lien Obligations and that may be retained by the Grantors to an amount greater than permitted under the Second Lien Credit Agreement;
- (f) (f) for the First Lien Obligations, modifies a covenant or event of default that directly restricts one or more Grantors from making payments under the

Second Lien Loan Documents that would otherwise be permitted under the First Lien Loan Documents as in effect on the date hereof;

- (g) for the Second Lien Obligations, modifies covenants, defaults, or events of default to make them materially more restrictive as to any Grantor, except for modifications to match changes made to the First Lien Obligations so as to preserve, on substantially similar economic terms, any differential that exists on the date hereof between the covenants, defaults, or events of default in the First Lien Loan Documents and the covenants, defaults, or events of default in the Second Lien Loan Documents;
- (h) for the Second Lien Obligations, accelerates any date upon which a scheduled payment of principal or interest is due, or otherwise decreases the weighted average life to maturity;
- (i) for the Second Lien Obligations, changes a prepayment, redemption, or defeasance provision so as to require a new payment or accelerate an existing payment Obligation; or
- (j) for the Second Lien Obligations,
 - (1) changes a term that would result in a default under the First Lien Credit Agreement,
 - (2) increases the Obligations of a Grantor, or
 - (3) confers additional rights on a Second Lien Claimholder in a manner materially adverse to a First Lien Claimholder.

[ADDITIONAL SECTION FOR ASSET-BASED LENDING TRANSACTION]

- [(*) for the First Lien Obligations, increases the Advance Rate applicable to the Borrowing Base to a rate higher than the Advance Rate on the date hereof, or modifies the definitions of “Borrowing Base,” “Eligible Account,” “Eligible Inventory,” or “Reserves” in the First Lien Credit Agreement on the date hereof so as to increase the amount of credit available to Borrower, *provided* that First Lien Agent’s discretion to establish additional reserves, to release reserves, and to determine eligibility will not be affected or limited in any manner.]

[END OF ADDITIONAL SECTION]

2.3 PARALLEL MODIFICATIONS TO SECOND LIEN OBLIGATIONS

Subject to Section 2.2, “*Modifications Requiring Consent*,” if a First Lien Claimholder and a Grantor modify a First Lien Collateral Document, the modification will apply automatically to any comparable provision of a Second Lien Collateral Document in which the Grantor grants a Lien on the same Collateral, without the consent of any

Second Lien Claimholder and without any action by Second Lien Agent or any Grantor, *provided* that no such modification will

- (a) remove or release Second Lien Collateral, except to the extent that (1) the release is permitted or required by section 6.1, “*Use of Cash Collateral and DIP Financing*,” and (2) there is a corresponding release of First Lien Collateral,
- (b) impose duties on Second Lien Agent without its consent, [or]
- (c) permit other Liens on the Collateral not permitted under the terms of the Second Lien Loan Documents or section 6, “*Insolvency Proceedings*,” of this Agreement[, or
- (d) be prejudicial to the interest of Second Lien Claimholders to a greater extent than First Lien Claimholders (other than by virtue of their relative priorities and rights and obligations hereunder)].

2.4 NOTICE OF MODIFICATIONS

First Lien Agent will notify Second Lien Agent, and Second Lien Agent will notify First Lien Agent, of each modification to the First Lien Obligations or Second Lien Obligations, respectively, within ten Business Days after the modification’s effective date and, if requested by the notified Agent, promptly provide copies of any documents executed and delivered in connection with the modification.

Notice and copies will not be required to the extent Borrower or a Grantor has provided the same to the Agent to be notified.

3 ENFORCEMENT

3.1 WHO MAY EXERCISE REMEDIES

- (a) Subject to subsections (b) and (c) below, until the Discharge of First Lien Obligations up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations, First Lien Claimholders will have the exclusive right to
 - (1) commence and maintain an Enforcement Action (including the rights to set off or credit bid their debt),
 - (2) subject to section 1.10, “*Release of Liens or Guaranties*,” make determinations regarding the release or disposition of, or restrictions with respect to, the Collateral, and
 - (3) otherwise enforce the rights and remedies of a secured creditor under the U.C.C. and the Bankruptcy Laws of any applicable jurisdiction, so long as any Proceeds received by First Lien Agent and other First Lien

Claimholders in the aggregate in excess of those necessary to achieve Discharge of First Lien Obligations up to the First Lien Cap with respect to First Lien Obligations that are Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations are distributed in accordance with Section 4.1, “*Application of Proceeds*,” except as otherwise required pursuant to the U.C.C. and applicable law, subject to the relative priorities described in section 1.1, “*Seniority of Liens Securing First Lien Obligations*.”

- (b) Notwithstanding the preceding section 3.1(a), Second Lien Claimholders may commence an Enforcement Action or exercise rights with respect to a Lien securing a Second Lien Obligation if
 - (1) [120–180] days have elapsed since Second Lien Agent notified First Lien Agent that the Second Lien Obligations were due in full as a result of acceleration or otherwise (the *Standstill Period*),
 - (2) First Lien Claimholders are not then diligently pursuing an Enforcement Action with respect to all or a material portion of the Collateral or diligently attempting to vacate any stay or prohibition against such exercise, [and]
 - (3) any acceleration of the Second Lien Obligations has not been rescinded[, and]
 - (4) [no] [the applicable] Grantor is [not] then a debtor in an Insolvency Proceeding].
- (c) Notwithstanding section 3.1(a), [but subject to section 1.5, “*First and Second Lien Collateral to Be Identical*,”] a Second Lien Claimholder may
 - (1) file a proof of claim or statement of interest, vote on a plan of reorganization (including a vote to accept or reject a plan of partial or complete liquidation, reorganization, arrangement, composition, or extension), and make other filings, arguments, and motions, with respect to the Second Lien Obligations and the Collateral in any Insolvency Proceeding commenced by or against any Grantor, in each case in accordance with this Agreement,
 - (2) take action to create, perfect, preserve, or protect its Lien on the Collateral, so long as such actions are not adverse to the priority status in accordance with this Agreement of Liens on the Collateral securing the First Lien Obligations or First Lien Claimholders’ rights to exercise remedies,

- (3) file necessary pleadings in opposition to a claim objecting to or otherwise seeking the disallowance of a Second Lien Obligation or a Lien securing the Second Lien Obligation,
- (4) join (but not exercise any control over) a judicial foreclosure or Lien enforcement proceeding with respect to the Collateral initiated by First Lien Agent, to the extent that such action could not reasonably be expected to interfere materially with the Enforcement Action, but no Second Lien Claimholder may receive any Proceeds thereof unless expressly permitted herein, and
- (5) bid for or purchase Collateral at any public, private, or judicial foreclosure upon such Collateral initiated by any First Lien Claimholder, or any sale of Collateral during an Insolvency Proceeding; *provided* that such bid may not include a “credit bid” in respect of any Second Lien Obligations unless the proceeds of such bid are otherwise sufficient to cause the Discharge of First Lien Obligations up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations.

[OPTIONAL PROVISIONS]

- [(6) take or fail to take any Lien securing First Lien Obligations or any other collateral security therefor, or take or fail to take any action necessary or appropriate to ensure that any Lien is enforceable, perfected, or entitled to priority as against any other Lien or to ensure that any Proceeds of any property subject to a Lien are applied to the payment of any Obligation secured thereby, or
- (7) otherwise release, discharge, or permit the lapse of any Lien securing a First Lien Obligation.]

[END OF OPTIONAL PROVISIONS]

- (d) [Notwithstanding any provision of this Agreement] [Except as otherwise expressly set forth in this section 3.1 [and _____]], Second Lien Claimholders may exercise any rights and remedies that could be exercised by an unsecured creditor [other than initiating or joining in an involuntary case or proceeding under the Bankruptcy Code with respect to a Grantor] [prior to the end of the Standstill Period] against a Grantor that has guaranteed or granted Liens to secure the Second Lien Obligations in accordance with the terms of the Second Lien Loan Documents and applicable law, *provided* that any judgment Lien obtained by a Second Lien Claimholder as a result of such exercise of rights

will be included in the Second Lien Collateral and be subject to this Agreement for all purposes (including in relation to the First Lien Obligations).

[OPTIONAL PROVISION]

- [(e) First Lien Agent will promptly notify Second Lien Agent of the Discharge of First Lien Obligations.]

[END OF OPTIONAL PROVISION]

3.2 MANNER OF EXERCISE

- (a) A First Lien Claimholder may take any Enforcement Action
 - (1) in any manner in its sole discretion in compliance with applicable law,
 - (2) without consultation with or the consent of any Second Lien Claimholder,
 - (3) regardless of whether an Insolvency Proceeding has been commenced,
 - (4) regardless of any provision of any Second Lien Loan Document (other than this Agreement), and
 - (5) regardless of whether such exercise is adverse to the interest of any Second Lien Claimholder.
- (b) The rights of a First Lien Claimholder or the Control Agent to enforce any provision of this Agreement or any First Lien Loan Document will not be prejudiced or impaired by
 - (1) any act or failure to act of any Grantor, any other First Lien Claimholder, or the Control Agent, or
 - (2) noncompliance by any Person other than such First Lien Claimholder with any provision of this Agreement, any First Lien Loan Document, or any Second Lien Loan Document, regardless of any knowledge thereof that any First Lien Claimholder or the Control Agent may have or otherwise be charged with.
- (c) No Second Lien Claimholder will contest, protest, object to, or take any action to hinder, and each waives any and all claims with respect to, any Enforcement Action by a First Lien Claimholder in compliance with this Agreement and applicable law.

3.3 SPECIFIC PERFORMANCE

First Lien Agent and Second Lien Agent may each demand specific performance of this Agreement, and each waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance in any action brought by a Second Lien Claimholder or a First Lien Claimholder, respectively.

3.4 NOTICE OF EXERCISE

The First and Second Lien Agents will each provide reasonable prior notice to the other of its initial material Enforcement Action.

4 PAYMENTS

4.1 APPLICATION OF PROCEEDS

Until the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations, and regardless of whether an Insolvency Proceeding has been commenced, Collateral or Proceeds received in connection with an Enforcement Action or subject to section 6.7, “*Reorganization Securities*,” received in connection with any Insolvency Proceeding involving a Grantor will be applied

- (a) *first*, to the payment in full or cash collateralization of all First Lien Obligations that are not Excess First Lien Obligations,
- (b) *second*, to the payment in full of the Second Lien Obligations [that are not Excess Second Lien Obligations],
- (c) *third*, to the payment in full of any Excess First Lien Obligations[,
- (d) *fourth*, to the payment in full of any Excess Second Lien Obligations], and
- (e) *fifth*, to the applicable Grantor or as otherwise required by applicable law.

in each case as specified in the First Lien Documents or the Second Lien Documents, or as otherwise determined by the First Lien Claimholders or the Second Lien Claimholders, as applicable.

[Notwithstanding the foregoing, until the Discharge of First Lien Obligations up to the First Lien Cap with respect to First Lien Obligations that are capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations, any non-cash Collateral or non-cash Proceeds will be held by First Lien Agent as Collateral unless the failure to apply such amounts as set forth above would be commercially unreasonable.]

4.2 INSURANCE

First Lien Agent and Second Lien Agent will be named as additional insureds and/or loss payees, as applicable, under any insurance policies maintained by any Grantor. Until the Discharge of First Lien Obligations up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations, and subject to the rights of the Grantors under the First Lien Loan Documents,

- (a) First Lien Agent will have the exclusive right to adjust settlement for any losses covered by an insurance policy covering the Collateral, and to approve an award granted in a condemnation or similar proceeding (or a deed in lieu of condemnation) affecting the Collateral, and
- (b) all Proceeds of such policy, award, or deed will be applied in the order provided in section 4.1, “*Application of Proceeds*,” and thereafter, if no Second Lien Obligations are outstanding, to the payment to the owner of the subject property, such other Person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct.

4.3 PAYMENT TURNOVER

Until the Discharge of First Lien Obligations up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations, whether or not an Insolvency Proceeding has commenced, Collateral or Proceeds (including insurance proceeds or property or Proceeds subject to Liens referred to in paragraph (d) of section 1.5, “*First and Second Lien Collateral to Be Identical*”) received by a Second Lien Claimholder in connection with an Enforcement Action or, subject to section 6.7, “*Reorganization Securities*,” received in connection with any Insolvency Proceeding, will be

- (a) segregated and held in trust, and
- (b) promptly paid over to First Lien Agent in the form received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. First Lien Agent is authorized to make such endorsements as agent for the Second Lien Claimholder. This authorization is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

4.4 REFINANCING AFTER DISCHARGE OF FIRST LIEN OBLIGATIONS

If, after the Discharge of First Lien Obligations, Borrower issues or incurs Refinancing of the First Lien Obligations that is permitted to be incurred under the Second Lien Loan Documents, then the First Lien Obligations will automatically be deemed not to have been discharged for all purposes of this Agreement (except for

actions taken as a result of the initial Discharge of First Lien Obligations). Upon Second Lien Agent's receipt of a notice stating that Borrower has entered into a new First Lien Loan Document and identifying the new First Lien Agent (the *New Agent*),

- (a) the Obligations under such Refinancing indebtedness will automatically be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein,
- (b) the New Agent under such new First Lien Loan Documents will be First Lien Agent for all purposes of this Agreement,
- (c) Second Lien Agent will promptly
 - (1) enter into such documents and agreements (including amendments or supplements to this Agreement) as Borrower or the New Agent reasonably requests to provide to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement, and
 - (2) deliver to the New Agent any Pledged Collateral held by it together with any necessary endorsements (or otherwise allow the New Agent to obtain control of such Pledged Collateral), and
- (d) the New Agent will promptly agree in a writing addressed to Second Lien Agent to be bound by the terms of this Agreement.

If any Obligations under the new First Lien Loan Documents are secured by Collateral that does not also secure the Second Lien Obligations, then the Grantors will cause the Second Lien Obligations to be secured at such time by a second priority Lien on such Collateral to the same extent provided in the First Lien Collateral Documents and this Agreement.

5 PURCHASE OF FIRST LIEN OBLIGATIONS BY SECOND LIEN CLAIMHOLDERS

5.1 PURCHASE RIGHT

- (a) If there is
 - (1) an acceleration of the First Lien Obligations in accordance with the First Lien Credit Agreement,
 - (2) a payment default under the First Lien Credit Agreement that is not cured, or waived by First Lien Claimholders, within sixty days of its occurrence, or
 - (3) the commencement of an Insolvency Proceeding, (each a *Purchase Event*), then Second Lien Claimholders may purchase all, but not less

than all, of the First Lien Obligations that are included in the Capped Obligations up to but not in excess of the First Lien Cap plus all, but not less than all, of the First Lien Obligations that are not included in the Capped Obligations (the *Purchase Obligations*). Such purchase will

- (A) include all principal of, and all accrued and unpaid interest, fees, and expenses in respect of, all First Lien Obligations outstanding at the time of purchase that are included in the Capped Obligations up to but not in excess of the First Lien Cap plus all principal of, and all accrued and unpaid interest, fees, and expenses in respect of, all First Lien Obligations that are not included in the Capped Obligations,
- (B) be made pursuant to an *Assignment Agreement* [(as such term is defined in the First Lien Credit Agreement)] [substantially in the form attached hereto as Exhibit A (the bracketed provisions therein to be appropriately modified to reflect the terms of the First Lien Documents and the outstanding First Lien Obligations)] [in form and substance reasonably satisfactory to, and prepared by counsel for, First Lien Agent (with the cost of such counsel to be paid by the Purchasing Creditors)], whereby Second Lien Claimholders will assume all funding commitments and Obligations of First Lien Claimholders under the First Lien Loan Documents, and
- (C) otherwise be subject to the terms and conditions of this section 5. Each First Lien Claimholder will retain all rights to indemnification provided in the relevant First Lien Loan Documents for all claims and other amounts relating to periods prior to the purchase of the First Lien Obligations pursuant to this section 5.

- (b) First Lien Claimholders will not commence an Enforcement Action while Second Lien Claimholders have a right to purchase the First Lien Obligations under this section 5.

5.2 PURCHASE NOTICE

- (a) Second Lien Claimholders desiring to purchase all of the Purchase Obligations (the *Purchasing Creditors*) will deliver a *Purchase Notice* to First Lien Agent that
 - (1) is signed by the Purchasing Creditors,
 - (2) states that it is a Purchase Notice under this section 5,

- (3) states that each Purchasing Creditor is irrevocably electing to purchase, in accordance with this section 5, the percentage of all of the Purchase Obligations stated in the Purchase Notice for that Purchasing Creditor, which percentages must aggregate exactly 100% for all Purchasing Creditors,
- (4) represents and warrants that the Purchase Notice is in conformity with the Second Lien Loan Documents and any other binding agreement among Second Lien Claimholders, and
- (5) designates a *Purchase Date* on which the purchase will occur, that is (x) at least five but not more than [fifteen] Business Days after First Lien Agent's receipt of the Purchase Notice, and (y) not more than sixty days after the Purchase Event.

A Purchase Notice will be ineffective if it is received by First Lien Agent after the occurrence giving rise to the Purchase Event is waived, cured, or otherwise ceases to exist.

[ALTERNATIVE SUBSECTION FAVORABLE TO SECOND LIEN LENDERS]

- [(5) designates a Purchase Date on which the purchase will occur that is at least five but not more than [fifteen] Business Days after First Lien Agent's receipt of the Purchase Notice.

The Purchase Notice must be received by First Lien Agent during the period following the occurrence of, and during the continuance of, a Purchase Event.]

[END OF ALTERNATIVE SUBSECTION]

- (b) Upon First Lien Agent's receipt of an effective Purchase Notice conforming to this section 5.2, the Purchasing Creditors will be irrevocably obligated to purchase, and the First Lien Creditors will be irrevocably obligated to sell, the First Lien Obligations in accordance with and subject to this section 5.

5.3 PURCHASE PRICE

The *Purchase Price* for the Purchase Obligations will equal the sum of

- (a) the principal amount of all loans, advances, or similar extensions of credit included in the Purchase Obligations (including unreimbursed amounts drawn on Letters of Credit, but excluding the undrawn amount of outstanding Letters of Credit), and all accrued and unpaid interest thereon through the Purchase Date ([including] [excluding] any acceleration prepayment penalties or premiums),

- (b) the net aggregate amount then owing to counterparties under Hedge Agreements that are First Lien Loan Documents, including all amounts owing to the counterparties as a result of the termination (or early termination) thereof to the extent not allocable to Excess First Lien Obligations,
- (c) the net aggregate amount then owing to creditors under Cash Management Agreements that are First Lien Loan Documents, including all amounts owing to the creditors as a result of the termination (or early termination) thereof to the extent not allocable to Excess First Lien Obligations, and
- (d) all accrued and unpaid fees, expenses, [indemnities,] and other amounts owed to the First Lien Creditors under the First Lien Loan Documents on the Purchase Date to the extent not allocable to Excess First Lien Obligations.

5.4 PURCHASE CLOSING

On the Purchase Date,

- (a) the Purchasing Creditors and First Lien Agent will execute and deliver the Assignment Agreement,
- (b) the Purchasing Creditors will pay the Purchase Price to First Lien Agent by wire transfer of immediately available funds,
- (c) the Purchasing Creditors will deposit with First Lien Agent or its designee by wire transfer of immediately available funds, [105%] of the aggregate undrawn amount of all then outstanding Letters of Credit and the aggregate facing and similar fees that will accrue thereon through the stated maturity of the Letters of Credit (assuming no drawings thereon before stated maturity), and
- (d) Second Lien Agent will execute and deliver to First Lien Agent a waiver of all claims arising out of this Agreement and the transactions contemplated hereby as a result of exercising the purchase option contemplated by this section 5.

5.5 EXCESS FIRST LIEN OBLIGATIONS NOT PURCHASED

Any Excess First Lien Obligations will, after the closing of the purchase of the First Lien Obligations in accordance with this section 5, remain Excess First Lien Obligations for all purposes of this Agreement.

5.6 ACTIONS AFTER PURCHASE CLOSING

- (a) Promptly after the closing of the purchase of all Purchase Obligations, First Lien Agent will distribute the Purchase Price to First Lien Claimholders in accordance with the terms of the First Lien Loan Documents.

- (b) After the closing of the purchase of all Purchase Obligations, the Purchasing Creditors may request that First Lien Agent immediately resign as administrative agent and, if applicable, collateral agent under the First Lien Loan Documents, and First Lien Agent will immediately resign if so requested. Upon such resignation, a new administrative agent and, if applicable, a new collateral agent will be elected or appointed in accordance with the First Lien Loan Documents.
- (c) First Lien Agent will apply cash collateral to reimburse Letter of Credit issuers for drawings under Letters of Credit, any customary fees charged by the issuer in connection with such draws, and facing or similar fees. After giving effect to each such payment, any remaining cash collateral that exceeds [105%] of the sum of the aggregate undrawn amount of all then outstanding Letters of Credit and the aggregate facing and similar fees that will accrue thereon through the stated maturity of such Letters of Credit (assuming no drawings thereon before stated maturity) will be returned to the Purchasing Creditors (as their interests appear). When all Letters of Credit have been cancelled with the consent of the beneficiary thereof, expired, or been fully drawn, and after all payments from the account described above have been made, any remaining cash collateral will be returned to the Purchasing Creditors, as their interests appear.
- (d) If for any reason other than the gross negligence or willful misconduct of First Lien Agent, the cash collateral is less than the amount owing with respect to a Letter of Credit described in the preceding subsection (c), then the Purchasing Creditors will, in proportion to their interests, promptly reimburse First Lien Agent (who will then pay the issuing bank) the amount of the deficiency.

5.7 NO RECOURSE OR WARRANTIES; DEFAULTING CREDITORS

- (a) First Lien Claimholders will be entitled to rely on the statements, representations, and warranties in the Purchase Notice without investigation, even if First Lien Claimholders are notified that any such statement, representation, or warranty is not or may not be true.
- (b) The purchase and sale of the First Lien Obligations under this section 5 will be without recourse and without representation or warranty of any kind by First Lien Claimholders, except that First Lien Claimholders represent and warrant that on the Purchase Date, immediately before giving effect to the purchase,
 - (1) the principal of and accrued and unpaid interest on the First Lien Obligations, and the fees and expenses thereof, are as stated in the Assignment Agreement,

- (2) First Lien Claimholders own the First Lien Obligations free and clear of any Liens (other than participation interests not prohibited by the First Lien Credit Agreement, in which case the Purchase Price will be appropriately adjusted so that the Purchasing Creditors do not pay amounts represented by participation interests), and
- (3) each First Lien Claimholder has the full right and power to assign its First Lien Obligations and such assignment has been duly authorized by all necessary corporate action by such First Lien Claimholder.

[ALTERNATIVE SECTION FAVORABLE TO FIRST LIEN LENDERS]

- [(b) The purchase and sale of the Purchase Obligations under this section 5 will be without recourse and without any representation or warranty whatsoever by First Lien Claimholders, except that First Lien Claimholders represent and warrant that on the Purchase Date, immediately before giving effect to the purchase, First Lien Claimholders
 - (4) own the Purchase Obligations free and clear of all Liens (other than participation interests not prohibited by the First Lien Credit Agreement, in which case the Purchase Price will be appropriately adjusted so that the Purchasing Creditors do not pay amounts represented by participation interest), and
 - (5) have the right to convey whatever claims and interests they may have in respect of the Purchase Obligations.]

[END OF ALTERNATIVE SECTION]

- (c) The obligations of First Lien Claimholders to sell their respective Purchase Obligations under this section 5 are several and not joint and several. If a First Lien Claimholder (a *Defaulting Creditor*) breaches its obligation to sell its Purchase Obligations under this section 5, no other First Lien Claimholder will be obligated to purchase the Defaulting Creditor's Purchase Obligations for resale to the holders of Second Lien Obligations. A First Lien Claimholder that complies with this section 5 will not be in default of this Agreement or otherwise be deemed liable for any action or inaction of any Defaulting Creditor, *provided* that nothing in this subsection (c) will require the Purchasing Creditors to purchase less than all of the Purchase Obligations.
- (d) Borrower and Holdings irrevocably consent, and will use their best efforts to obtain any necessary consent of each other Grantor, to any assignment effected to one or more Purchasing Creditors pursuant to this section 5.

6 INSOLVENCY PROCEEDINGS

6.1 USE OF CASH COLLATERAL AND DIP FINANCING

- (a) Until the Discharge of First Lien Obligations up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations, if an Insolvency Proceeding has commenced, Second Lien Agent, as holder of a Lien on the Collateral, will not contest, protest, or object to, and each Second Lien Claimholder will be deemed to have consented to,
- (1) any use, sale, or lease of “cash collateral” (as defined in section 363(a) of the Bankruptcy Code), and
 - (2) Borrower or any other Grantor obtaining DIP Financing if First Lien Agent consents in writing to such use, sale, or lease, or DIP Financing, *provided that*
 - (A) Second Lien Agent otherwise retains its Lien on the Collateral, [and]
 - (B) any Second Lien Claimholder may seek adequate protection as permitted by section 6.4, “*Adequate Protection*,” and, if such adequate protection is not granted, Second Lien Agent may object under this section 6.1 solely on such basis[.][.]
 - [(C) after taking into account the use of cash collateral and the principal amount of any DIP Financing (after giving effect to any Refinancing of First Lien Obligations) on any date, the sum of the then outstanding principal amount of any First Lien Obligations and any DIP Financing does not exceed the First Lien Cap on such date,
 - (D) such DIP Financing and the Liens securing such DIP Financing are pari passu with or superior in priority to the then outstanding First Lien Obligations and the Liens securing such First Lien Obligations, and
 - (E) the interest rate, fees, advance rates, lending limits, and sublimits are commercially reasonable under the circumstances.] [Upon written request from First Lien Agent, Second Lien Agent, as holder of a Lien on the Collateral, will join any objection by First Lien Agent to the use, sale, or lease of cash collateral for any

purpose other than adequate protection payments to Second Lien Claimholders.]

[(b) Any customary “carve-out” or other similar administrative priority expense or claim consented to in writing by First Lien Agent to be paid prior to the Discharge of First Lien Obligations up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations will be deemed for purposes of section 6.1(a)

(3) to be a use of cash collateral, and

(4) [not to be] a principal amount of DIP Financing at the time of such consent.]

[No Second Lien Claimholder may provide DIP Financing to a Borrower or other Grantor secured by Liens equal or senior in priority to the Liens securing any First Lien Obligations[, *provided* that if no First Lien Claimholder offers to provide DIP Financing to the extent permitted under section 6.1(a) on or before the date of the hearing to approve DIP Financing, then a Second Lien Claimholder may seek to provide such DIP Financing secured by Liens equal or senior in priority to the Liens securing any First Lien Obligations, and First Lien Claimholders may object thereto].]

[(c) nothing in this section 6.1 limits or impairs the right of Second Lien Agent to object to any motion regarding DIP Financing (including a DIP Financing proposed by one or more First Lien Claimholders) or cash collateral to the extent that

(5) the objection could be asserted in an Insolvency Proceeding by unsecured creditors generally[, is consistent with the other terms of this section 6.1, and is not based on the status of any Second Lien Claimholder as holder of a Lien], or

(6) the DIP Financing does not meet the requirements of section 6.1(a).]

6.2 SALE OF COLLATERAL

Second Lien Agent, as holder of a Lien on the Collateral and on behalf of the Second Lien Claimholders, will not contest, protest, or object, and will be deemed to have consented pursuant to section 363(f) of the Bankruptcy Code, to a Disposition of Collateral free and clear of its Liens or other interests under section 363 of the Bankruptcy Code if First Lien Agent consents in writing to the Disposition, *provided* that

- (a) either (i) pursuant to court order, the Liens of Second Lien Claimholders attach to the net Proceeds of the Disposition with the same priority and validity as the Liens held by Second Lien Claimholders on such Collateral, and the Liens remain subject to the terms of this Agreement, or (ii) the Proceeds of a Disposition of Collateral received by First Lien Agent in excess of those necessary to achieve the Discharge of First Lien Obligations, up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations, are distributed in accordance with the U.C.C. and applicable law[,] [.]
- [(b) the net cash Proceeds of the Disposition that are applied to First Lien Obligations permanently reduce the First Lien Obligations pursuant to section 4.1, “*Application of Proceeds*,” or if not so applied, are subject to the rights of Second Lien Agent to object to any further use notwithstanding section 6.1(a), and
- (c) Second Lien Claimholders [may] [are not deemed to have waived any rights to] credit bid on the Collateral in any such Disposition in accordance with section 363(k) of the Bankruptcy Code.]

Notwithstanding the preceding sentence, Second Lien Claimholders may object to any Disposition of Collateral that could be raised in an Insolvency Proceeding by unsecured creditors generally [so long as not otherwise inconsistent with the terms of this Agreement].

[Upon First Lien Agent’s request, Second Lien Agent, solely in its capacity as holder of a Lien on Collateral, will join any objection asserted by First Lien Agent to any Disposition of Collateral during an Insolvency Proceeding.]

6.3 RELIEF FROM THE AUTOMATIC STAY

Until the Discharge of First Lien Obligations up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations, no Second Lien Claimholder may[, during any Standstill Period,] seek relief from the automatic stay or any other stay in an Insolvency Proceeding in respect of the Collateral without First Lien Agent’s prior written consent [or oppose any request by First Lien Agent for relief from such stay] [, except to the extent that

[a First Lien Claimholder (in such capacity)] [First Lien Agent] seeks or obtains relief from or modification of such stay[, or a motion for adequate protection permitted under section 6.4, “*Adequate Protection*,” is denied by the Bankruptcy Court]].

6.4 ADEQUATE PROTECTION

- (a) No Second Lien Claimholder will contest, protest, or object to
- (1) a request by a First Lien Claimholder for “adequate protection” under any Bankruptcy Law, or
 - (2) an objection by a First Lien Claimholder to a motion, relief, action, or proceeding based on a First Lien Claimholder claiming a lack of adequate protection.
- (b) Notwithstanding the preceding section 6.4(a), in an Insolvency Proceeding:
- (1) Except as permitted in this section 6.4, no Second Lien Claimholders may seek or request adequate protection or relief from the automatic stay imposed by section 362 of the Bankruptcy Code [or other relief].
 - (2) [If a First Lien Claimholder is granted adequate protection in the form of additional or replacement Collateral in connection with a motion described in section 6.1, “*Use of Cash Collateral and DIP Financing*,” then] Second Lien Agent may seek or request adequate protection in the form of a Lien on [such] additional or replacement Collateral, which Lien will be subordinated to the Liens securing the First Lien Obligations and any DIP Financing (and all related Obligations) on the same basis as the other Liens securing the Second Lien Obligations are subordinated to the Liens securing First Lien Obligations under this Agreement.
 - (3) Any claim by a Second Lien Claimholder under section 507(b) of the Bankruptcy Code will be subordinate in right of payment to any claim of First Lien Claimholders under section 507(b) of the Bankruptcy Code and any payment thereof will be deemed to be Proceeds of Collateral[, *provided* that, subject to section 6.7, “*Reorganization Securities*,” Second Lien Claimholders will be deemed to have agreed pursuant to section 1129(a)(9) of the Bankruptcy Code that such section 507(b) claims may be paid under a plan of reorganization in any form having a value on the effective date of such plan equal to the allowed amount of such claims].
 - [(4) So long as First Lien Agent is receiving payment in cash of [all] Post-Petition Claims [consisting of all interest at the applicable rate under the First Lien Loan Documents], Second Lien Agent may seek and, subject to the terms hereof, retain payments of Post-Petition Claims [consisting of interest at the [non-default] [applicable] rate] under the Second Lien Loan Documents (*Second Lien Adequate Protection Payments*). If a Second Lien Claimholder receives Second Lien

Adequate Protection Payments before the Discharge of First Lien Obligations up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations, then upon the effective date of any plan or the conclusion or dismissal of any Insolvency Proceeding, the Second Lien Claimholder will pay over to First Lien Agent pursuant to section 4.1, “*Application of Proceeds*,” an amount equal to the lesser of (i) the Second Lien Adequate Protection Payments received by the Second Lien Claimholder and (ii) the amount necessary to Discharge the First Lien Obligations. [Notwithstanding anything herein to the contrary, First Lien Claimholders will [not] be deemed to have consented to, and expressly [waive] [retain] their rights to object to, the payment of Second Lien Adequate Protection Payments.]]

6.5 FIRST LIEN OBJECTIONS TO SECOND LIEN ACTIONS

Subject to section 3.1, “*Who May Exercise Remedies*,” nothing in this section 6 limits a First Lien Claimholder from objecting in an Insolvency Proceeding or otherwise to any action taken by a Second Lien Claimholder, including the Second Lien Claimholder’s seeking adequate protection [or asserting any of its rights and remedies under the Second Lien Loan Documents or otherwise].

[ALTERNATIVE SECTION FAVORABLE TO SECOND LIEN LENDERS]

[6.5 FIRST LIEN OBJECTIONS TO SECOND LIEN ACTIONS

Subject to section 3.1, “*Who May Exercise Remedies*,” nothing in this section 6 limits a First Lien Claimholder from objecting in an Insolvency Proceeding or otherwise to any action taken by a Second Lien Claimholder, including the Second Lien Claimholder’s seeking adequate protection (other than adequate protection permitted under section 6.4(b)) or asserting any of its rights and remedies under the Second Lien Loan Documents or otherwise.]

[END OF ALTERNATIVE SECTION]

6.6 AVOIDANCE; REINSTATEMENT OF OBLIGATIONS

If a First Lien Claimholder or a Second Lien Claimholder receives payment or property on account of a First Lien Obligation or Second Lien Obligation, and the payment is subsequently invalidated, avoided, declared to be fraudulent or preferential, set aside, or otherwise required to be transferred to a trustee, receiver, or the estate of Borrower or other Grantor (a *Recovery*) , then, to the extent of the Recovery, the First Lien Obligations or Second Lien Obligations intended to have been satisfied by the payment will be reinstated as First Lien Obligations or Second Lien Obligations, as

applicable, on the date of the Recovery, and no Discharge of First Lien Obligations or Discharge of Second Lien Obligations, as applicable, will be deemed to have occurred for all purposes hereunder. If this Agreement is terminated prior to a Recovery, this Agreement will be reinstated in full force and effect, and such prior termination will not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from the date of reinstatement. [Upon any such reinstatement of First Lien Obligations, each Second Lien Claimholder will deliver to First Lien Agent any Collateral or Proceeds thereof received between the Discharge of First Lien Obligations and their reinstatement in accordance with section 4.3, “*Payment Turnover*.”] [No Second Lien Claimholder may benefit from a Recovery, and any distribution made to a Second Lien Claimholder as a result of a Recovery will be paid over to First Lien Agent for application to the First Lien Obligations in accordance with section 4.1, “*Application of Proceeds*.”]

6.7 REORGANIZATION SECURITIES

Nothing in this Agreement prohibits or limits the right of a Second Lien Claimholder to receive and retain any debt or equity securities that are issued by a reorganized debtor pursuant to a plan of reorganization or similar dispositive restructuring plan in connection with an Insolvency Proceeding[, *provided* that any debt securities received by a Second Lien Claimholder on account of a Second Lien Obligation that constitutes a “secured claim” within the meaning of section 506(b) of the Bankruptcy Code will be paid over or otherwise transferred to First Lien Agent for application in accordance with section 4.1, “*Application of Proceeds*,” unless such distribution is made under a plan that is consented to by the affirmative vote of all classes composed of the secured claims of First Lien Claimholders].

If, in an Insolvency Proceeding, debt Obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of First Lien Obligations and on account of Second Lien Obligations, then, to the extent the debt Obligations distributed on account of the First Lien Obligations and on account of the Second Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt Obligations pursuant to such plan and will apply with like effect to the Liens securing such debt Obligations.

6.8 POST-PETITION CLAIMS

- (a) No Second Lien Claimholder may oppose or seek to challenge any claim by a First Lien Claimholder for allowance or payment in any Insolvency Proceeding of First Lien Obligations consisting of Post-Petition Claims.

- (b) No First Lien Claimholder may oppose or seek to challenge in an Insolvency Proceeding a claim by a Second Lien Claimholder for allowance [and any payment permitted under section 6.4, “*Adequate Protection*,”] of Second Lien Obligations consisting of Post-Petition Claims.

6.9 WAIVERS

Second Lien Agent waives

- (a) any claim it may hereafter have against any First Lien Claimholder arising out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the Collateral in an Insolvency Proceeding, so long as such actions are not in express contravention of the terms of this Agreement; [and]
- (b) any right to assert or enforce any claim under section 506(c) or 552 of the Bankruptcy Code as against First Lien Claimholders or any of the Collateral to the extent securing the First Lien Obligations [; and]
- (c) solely in its capacity as a holder of a Lien on Collateral, any claim or cause of action that any Grantor may have against any First Lien Claimholder, except to the extent arising from a breach by such First Lien Claimholder of the provisions of this Agreement].

6.10 SEPARATE GRANTS OF SECURITY AND SEPARATE CLASSIFICATION

The grants of Liens pursuant to the First Lien Collateral Documents and the Second Lien Collateral Documents constitute two separate and distinct grants. Because of, among other things, their differing rights in the Collateral, the Second Lien Obligations, to the extent deemed to be “secured claims” within the meaning of section 506(b) of the Bankruptcy Code, are fundamentally different from the First Lien Obligations and must be separately classified in any plan of reorganization in an Insolvency Proceeding. Second Lien Claimholders will not seek in an Insolvency Proceeding to be treated as part of the same class of creditors as First Lien Claimholders and will not oppose or contest any pleading by First Lien Claimholders seeking separate classification of their respective secured claims.

6.11 EFFECTIVENESS IN INSOLVENCY PROCEEDINGS

The Parties acknowledge that this Agreement is a “subordination agreement” under section 510(a) of the Bankruptcy Code, which will be effective before, during, and after the commencement of an Insolvency Proceeding. All references in this Agreement to any Grantor will include such Person as a debtor-in-possession and any receiver or trustee for such Person in an Insolvency Proceeding.

7 MISCELLANEOUS

7.1 CONFLICTS

If this Agreement conflicts with the First Lien Loan Documents or the Second Lien Loan Documents, this Agreement will control.

7.2 NO WAIVERS; REMEDIES CUMULATIVE; INTEGRATION

A Party's failure or delay in exercising a right under this Agreement will not waive the right, nor will a Party's single or partial exercise of a right preclude it from any other or further exercise of that or any other right.

The rights and remedies provided in this Agreement will be cumulative and not exclusive of other rights or remedies provided by law.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, oral or written, relating to its subject matter.

7.3 EFFECTIVENESS; SEVERABILITY; TERMINATION

This Agreement will become effective when executed and delivered by the Parties.

Each First Lien Claimholder and each Second Lien Claimholder waives any right it may have under applicable law to revoke this Agreement or any provision thereunder or consent by it thereto.

This Agreement will survive, and continue in full force and effect, in any Insolvency Proceeding.

If a provision of this Agreement is prohibited or unenforceable in a jurisdiction, the prohibition or unenforceability will not invalidate the remaining provisions hereof, or invalidate or render unenforceable that provision in any other jurisdiction.

Subject to sections 1.6(d) and 1.6(g), "*Pledged Collateral*," 4.1, "*Application of Proceed*," 4.4, "*Refinancing After Discharge of First Lien Obligations*," 6.5, "*First Lien Objections to Second Lien Actions*," and 6.6, "*Avoidance; Reinstatement of Obligations*," this Agreement will terminate and be of no further force and effect

- (a) for First Lien Claimholders, upon the Discharge of First Lien Obligations, and
- (b) for Second Lien Claimholders, upon the Discharge of Second Lien Obligations.

7.4 MODIFICATIONS OF THIS AGREEMENT

A modification or waiver of any provision of this Agreement will only be effective if in writing signed on behalf of each Party or its authorized agent, and a waiver will be a waiver only for the specific instance involved and will not impair the rights of the Parties making the waiver or the obligations of the other Parties to such Party in any other respect or at any other time. Notwithstanding the foregoing, neither Borrower nor

Holdings will have a right to consent to or approve a modification of this Agreement except to the extent its rights are directly affected.

7.5 INFORMATION CONCERNING FINANCIAL CONDITION OF BORROWER AND ITS SUBSIDIARIES

The Control Agent, First Lien Claimholders, and Second Lien Claimholders will each be responsible for keeping themselves informed of

- (a) the financial condition of the Grantors, and
- (b) all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations.

Neither the Control Agent nor any First Lien Claimholder will have any duty to advise any Second Lien Claimholder, and no Second Lien Claimholder will have any duty to advise the Control Agent or any first Lien Claimholder, of information known to it regarding any such condition or circumstances or otherwise.

If the Control Agent or a First Lien Claimholder provides any such information to a Second Lien Claimholder, or a Second Lien Claimholder provides any such information to the Control Agent or any First Lien Claimholder, the Control Agent or the First Lien Claimholder, or Second Lien Claimholder, respectively, will have no obligation to:

- (c) make, and it does not make, any express or implied representation or warranty, including as to accuracy, completeness, truthfulness, or validity,
- (d) provide additional information on that or any subsequent occasion,
- (e) undertake any investigation, or
- (f) disclose information that, pursuant to applicable law or accepted or reasonable commercial finance practices, it desires or is required to maintain as confidential.

7.6 NO RELIANCE

- (a) First Lien Agent acknowledges that it and each other First Lien Claimholder has, independently and without reliance on any Second Lien Claimholder, and based on documents and information the First Lien Claimholder deemed appropriate, made its own credit analysis and decision to enter into the First Lien Loan Documents and this Agreement, and will continue to make its own credit decisions in taking or not taking any action under the First Lien Loan Documents or this Agreement.
- (b) Second Lien Agent acknowledges that it and each other Second Lien Claimholder has, independently and without reliance on any First Lien Claimholder, and based on documents and information the Second Lien

Claimholder deemed appropriate, made its own credit analysis and decision to enter into the Second Lien Loan Documents and this Agreement, and will continue to make its own credit decisions in taking or not taking any action under the Second Lien Loan Documents or this Agreement.

7.7 NO WARRANTIES; INDEPENDENT ACTION

(a) Except as otherwise expressly provided herein,

- (1) no Second Lien Claimholder has made any express or implied representation or warranty to any First Lien Claimholder, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any Second Lien Loan Document, the ownership of any Collateral, or the perfection or priority of any Liens thereon, and
- (2) each Second Lien Claimholder may manage and supervise its loans and extensions of credit under the Second Lien Loan Documents in accordance with applicable law and as it may otherwise, in its sole discretion, deem appropriate.

(b) Except as otherwise expressly provided herein,

- (1) no First Lien Claimholder has made any express or implied representation or warranty to any Second Lien Claimholder, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any First Lien Loan Document, the ownership of any Collateral, or the perfection or priority of any Liens thereon, and
- (2) each First Lien Claimholder may manage and supervise its loans and extensions of credit under the First Lien Loan Documents in accordance with law and as it may otherwise, in its sole discretion, deem appropriate.

No Second Lien Claimholder will have any duty to any First Lien Claimholder, and no First Lien Claimholder will have any duty to any Second Lien Claimholder, to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with Borrower or any other Grantor (including the First Lien Loan Documents and the Second Lien Loan Documents), regardless of any knowledge thereof that it may have or be charged with.

7.8 SUBROGATION

If a Second Lien Claimholder pays or distributes cash, property, or other assets to a First Lien Claimholder under this Agreement, the Second Lien Claimholder will be

subrogated to the rights of the First Lien Claimholder with respect to the value of the payment or distribution, *provided* that the Second Lien Claimholder waives such right of subrogation until the Discharge of First Lien Obligations up to the First Lien Cap with respect to the Capped Obligations and in their entirety with respect to First Lien Obligations that are not Capped Obligations. Such payment or distribution will not reduce the Second Lien Obligations.

7.9 APPLICABLE LAW; JURISDICTION; SERVICE

This Agreement, and any claim or controversy relating to the subject matter hereof, will be governed by the law of the [State of New York].

All judicial proceedings brought against a Party arising out of or relating hereto may be brought in any state or federal court of competent jurisdiction in [the state, county, and city of New York]. Each Party irrevocably

- (a) accepts generally and unconditionally the nonexclusive personal jurisdiction and venue of such courts,
- (b) waives any defense of forum nonconveniens, and
- (c) agrees that service of process in such proceeding may be made by registered or certified mail, return receipt requested, to the Party at its address provided in accordance with section 7.11, "Notices," and that such service will confer personal jurisdiction over the Party in such proceeding and otherwise constitutes effective and binding service in every respect.

7.10 WAIVER OF JURY TRIAL

Each Party waives its right to jury trial of any claim or cause of action based upon or arising hereunder. The scope of this waiver is intended to encompass any and all disputes that may be filed in any court and that relate to the subject matter hereof, including contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Each Party acknowledges that this waiver is a material inducement to enter into a business relationship, that it has already relied on this waiver in entering into this Agreement, and that it will continue to rely on this waiver in its related future dealings. Each Party further represents and warrants 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 7.10 and executed by each of the Parties), and will apply to any subsequent modification hereof. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

7.11 NOTICES

- (a) Any notice to a First Lien Claimholder or a Second Lien Claimholder under this Agreement must also be given to First Lien Agent and Second Lien Agent, respectively. Unless otherwise expressly *provided* herein, notices and consents must be in writing and will be deemed to have been given (i) when delivered in person or by courier service and signed for against receipt thereof, (ii) upon receipt of facsimile, and (iii) three Business Days after deposit in the United States mail with first-class postage prepaid and properly addressed. For the purposes hereof, the address of each Party will be as set forth below the Party's name on the signature pages hereto, or at such other address as the Party may designate by notice to the other Parties.
- (b) Failure to give a notice or copies as required by section 2.4, "*Notice of Modifications*," [or] section 3.4, "*Notice of Exercise*," [or section 3.1(e) regarding notice of Discharge of First Lien Obligations] will not affect the effectiveness or validity of any modification or of this Agreement, or the effectiveness or validity of the exercise of remedies otherwise permitted hereunder and under applicable law, impose any liability on any First Lien Claimholder or Second Lien Claimholder, or waive any rights of any Party.

7.12 FURTHER ASSURANCES

First Lien Agent, Second Lien Agent, and Borrower will each take such further action and will execute and deliver such additional documents and instruments (in recordable form, if requested) as First Lien Agent or Second Lien Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

7.13 SUCCESSORS AND ASSIGNS

This Agreement is binding upon and inures to the benefit of each First Lien Claimholder, each Second Lien Claimholder, the Control Agent, and their respective successors and assigns. However, no provision of this Agreement will inure to the benefit of a trustee, debtor-in-possession, creditor trust or other representative of an estate or creditor of Borrower, or other Grantor, including where such estate or creditor representative is the beneficiary of a Lien securing Collateral by virtue of the avoidance of such Lien in an Insolvency Proceeding.

If either First Lien Agent or Second Lien Agent resigns or is replaced pursuant to the First Lien Credit Agreement or Second Lien Credit Agreement, as applicable, its successor will be a party to this Agreement with all the rights, and subject to all the obligations, of this Agreement. Notwithstanding any other provision of this Agreement,

this Agreement may not be assigned to any Person except as expressly contemplated herein.

7.14 AUTHORIZATION

By its signature hereto, each Person signing this Agreement on behalf of a Party represents and warrants to the other Parties that it is duly authorized to execute this Agreement.

7.15 NO THIRD-PARTY BENEFICIARIES

No Person is a third-party beneficiary of this Agreement and no trustee in bankruptcy for, or bankruptcy estate of, or unsecured creditor of, any Grantor will have or acquire or be entitled to exercise any right of a First Lien Claimholder or Second Lien Claimholder under this Agreement, whether upon an avoidance or equitable subordination of a Lien of First Lien Claimholder or Second Lien Claimholder, or otherwise. None of Borrower, any other Grantor, or any other creditor thereof has any rights hereunder, and neither Borrower nor any Grantor may rely on the terms hereof. Nothing in this Agreement impairs the Obligations of Borrower and the other Grantors to pay principal, interest, fees, and other amounts as provided in the First Lien Loan Documents and the Second Lien Loan Documents. Except to the extent expressly provided in this Agreement, no Person will have a right to notice of a modification to, or action taken under, this Agreement or any First Lien Collateral Document (including the release or impairment of any Collateral) other than as a lender under the First Lien Credit Agreement, and then only to the extent expressly provided in the First Lien Loan Documents. Except to the extent expressly provided in this Agreement, no Person will have a right to notice of a modification to or action taken under, this Agreement or any Second Lien Collateral Document (including the release or impairment of any Collateral) other than as a lender under the Second Lien Credit Agreement, and then only to the extent expressly provided in the Second Lien Loan Documents.

7.16 NO INDIRECT ACTIONS

Unless otherwise expressly stated, if a Party may not take an action under this Agreement, then it may not take that action indirectly, or assist or support any other Person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the Party but is intended to have substantially the same effects as the prohibited action.

7.17 COUNTERPARTS

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in

connection herewith by telecopy or electronic facsimile or other electronic means will be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable, and each Party utilizing telecopy, electronic facsimile, or other electronic means for delivery will deliver a manually executed original counterpart to each other Party on request.

7.18 ORIGINAL GRANTORS; ADDITIONAL GRANTORS

Borrower and each other Grantor on the date of this Agreement will constitute the original Grantors party hereto. The original Grantors will cause each Subsidiary of Borrower and of Holdings that becomes a Grantor after the date hereof to contemporaneously become a party hereto (as a Guarantor Subsidiary) by executing and delivering a joinder agreement (in form and substance satisfactory to First Lien Agent) to First Lien Agent. The Parties further agree that, notwithstanding any failure to take the actions required by the immediately preceding sentence, each Person that becomes a Grantor at any time (and any security granted by any such Person) will be subject to the provisions hereof as fully as if it constituted a Guarantor Subsidiary party hereto and had complied with the requirements of the immediately preceding sentence.

8 DEFINITIONS

8.1 DEFINED TERMS

Unless otherwise stated or the context otherwise clearly requires, the following terms have the following meanings:

Affiliate means, for 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 specified Person. For these purposes, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and “controlled” has a correlative meaning.

Agreement is defined in the Preamble.

Assignment Agreement is defined in section 5.1 (a)(B).

Bankruptcy Code means the federal Bankruptcy Code.

Bankruptcy Law means the Bankruptcy Code and any similar federal, state, or foreign bankruptcy, insolvency, receivership, or similar law affecting creditors’ rights generally.

Borrower is defined in the Preamble.

Business Day means a day other than a Saturday, Sunday, or other day on which commercial banks in [New York City] are authorized or required by law to close.

Capped Obligations is defined in section 1.4.

Cash Management Agreement means an agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer, or other cash management arrangements, to which a Grantor is a party and a lender under the First Lien Credit Agreement or an Affiliate of such lender is the applicable counterparty at the date hereof or at the time it enters into such agreement (even if such counterparty later ceases to be such a lender or Affiliate).

Collateral means all of the property of any Grantor, whether real, personal, or mixed, that is (or is required to be) both First Lien Collateral and Second Lien Collateral, including any property subject to Liens granted pursuant to section 6, “*Insolvency Proceedings*,” to secure both First Lien Obligations and Second Lien Obligations.

[Alternative Definition]

[*Collateral* means, at any time of determination, the First Lien Collateral and all other property of any Grantor in which each of First Lien Agent and Second Lien Agent has, pursuant to the First Lien Collateral Documents and the Second Lien Collateral Documents, respectively, a valid and perfected Lien (which Lien has not been avoided, disallowed, set aside, invalidated, or subordinated pursuant to Chapter 5 of the Bankruptcy Code or otherwise) securing payment of First Lien Obligations or Second Lien Obligations, respectively, and including any Lien granted pursuant to section 6, “*Insolvency Proceedings*,” to secure both First Lien Obligations and Second Lien Obligations.]

[END OF ALTERNATIVE DEFINITION]

Control Agent is defined in the Preamble.

Defaulting Creditor is defined in section 5.7(c).

DIP Financing means the obtaining of credit or incurring debt secured by Liens on the Collateral pursuant to section 364 of the Bankruptcy Code (or similar Bankruptcy Law).

Discharge of First Lien Obligations means, except to the extent otherwise expressly provided in section 5, “*Purchase of First Lien Obligations by Second Lien Claimholders*,”

- (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of an Insolvency Proceeding, whether or not such interest would be allowed in the proceeding) on all outstanding Indebtedness included in the First Lien Obligations,
- (b) payment in full in cash of all other First Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal

and interest are paid (other than indemnification Obligations for which no claim or demand for payment, whether oral or written, has been made at such time),

- (c) termination or expiration of any commitments to extend credit that would be First Lien Obligations [(other than pursuant to Cash Management Agreements or Hedge Agreements, in each case as to which satisfactory arrangements have been made with the applicable lender or Affiliate)], and
- (d) termination or cash collateralization (in an amount and manner reasonably satisfactory to First Lien Agent, but in no event greater than 105% of the aggregate undrawn face amount) of all Letters of Credit.

[ALTERNATIVE CLAUSE]

- [(d) [termination or cash collateralization (in an amount reasonably satisfactory to First Lien Agent) of any Hedge Agreement issued or entered into by any First Lien Claimholder] [termination of any Hedge Agreement and the payment in full by wire transfer of immediately available funds of all Obligations thereunder].

[END OF ALTERNATIVE CLAUSE]

Discharge of Second Lien Obligations means

- (e) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of an Insolvency Proceeding, whether or not such interest would be allowed in the proceeding) on all outstanding Indebtedness included in the Second Lien Obligations, and
- (f) payment in full in cash of all other Second Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than indemnification Obligations for which no claim or demand for payment, whether oral or written, has been made at such time).

Disposition means an “Asset Sale” (as defined in the First Lien Credit Agreement), or other sale, lease, exchange, transfer, or other disposition.

Enforcement Action means an action under applicable law to

- (g) foreclose, execute, levy, or collect on, take possession or control of, sell or otherwise realize upon (judicially or non-judicially), or lease, license, or otherwise dispose of (whether publicly or privately), Collateral, or otherwise exercise or enforce remedial rights with respect to Collateral under the First Lien Loan Documents or the Second Lien Loan Documents (including by way

of set-off, recoupment notification of a public or private sale or other disposition pursuant to the U.C.C. or other applicable law, notification to account debtors, notification to depository banks under deposit account control agreements, or exercise of rights under landlord consents, if applicable),

- (h) solicit bids from third Persons to conduct the liquidation or disposition of Collateral or to engage or retain sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third Persons for the purposes of valuing, marketing, promoting, and selling Collateral,
- (i) to receive a transfer of Collateral in satisfaction of Indebtedness or any other Obligation secured thereby, [or]
- (j) to otherwise enforce a security interest or exercise another right or remedy, as a secured creditor or otherwise, pertaining to the Collateral at law, in equity, or pursuant to the First Lien Loan Documents or Second Lien Loan Documents (including the commencement of applicable legal proceedings or other actions with respect to all or any portion of the Collateral to facilitate the actions described in the preceding clauses, and exercising voting rights in respect of equity interests comprising Collateral), [or]
- (k) effect the Disposition of Collateral by any Grantor after the occurrence and during the continuation of an event of default under the First Lien Loan Documents or the Second Lien Loan Documents with the consent of First Lien Agent or Second Lien Agent, as applicable,] *provided* that “Enforcement Action” will [not] be deemed to include the commencement of, or joinder in filing of a petition for commencement of, an Insolvency Proceeding against the owner of Collateral.

Equity Interest means, for any Person, any and all shares, interests, participations, or other equivalents, including membership interests (however designated, whether voting or non-voting) of equity of the Person, including, if the Person is a partnership, partnership interests (whether general or limited) or any other interest or participation that confers on a holder the right to receive a share of the profits and losses of, or distributions of assets of, the partnership, but not including debt securities convertible or exchangeable into equity unless and until actually converted or exchanged.

Excess First Lien Obligations is defined in section 1.11(c).

Excess First Lien Principal Obligations is defined in section 1.4(a). First Lien Agent is defined in the Preamble.

First Lien Cap is defined in section 1.4.

First Lien Claimholders is defined in section 1.3(d).

First Lien Collateral means the assets of any Grantor, whether real, personal, or mixed, as to which a Lien is granted as security for a First Lien Obligation.

[ALTERNATIVE DEFINITION]

[*First Lien Collateral* means the assets of any Grantor, whether real, personal, or mixed, as to which a Lien is granted as security for a First Lien Obligation pursuant to the First Lien Collateral Documents, which Lien is, at any time of determination, a valid and perfected Lien that has not been avoided, disallowed, set aside, invalidated, or subordinated pursuant to Chapter 5 of the Bankruptcy Code or otherwise.]

[END OF ALTERNATIVE DEFINITION]

First Lien Collateral Documents means the [security] [Collateral] documents defined in the First Lien Credit Agreement, and any other documents or instruments granting a Lien on real or personal property to secure a First Lien Obligation or granting rights or remedies with respect to such Liens.

First Lien Credit Agreement is defined in the Preamble.

First Lien Lenders means the “Lenders” under and as defined in the First Lien Loan Documents.

First Lien Loan Documents means

- (l) the First Lien Credit Agreement and the “Loan Documents” defined in the First Lien Credit Agreement,
- (m) each other agreement, document, or instrument providing for, evidencing, guaranteeing, or securing an Obligation under the First Lien Credit Agreement,
- (n) any other document or instrument executed or delivered at any time in connection with Borrower’s Obligations under the First Lien Credit Agreement, including any guaranty of or grant of Collateral to secure such Obligations, and any intercreditor or joinder agreement to which holders of First Lien Obligations are parties, and
- (o) each other agreement, document, or instrument providing for, evidencing, guaranteeing, or securing any DIP Financing provided by or consented to in writing by the First Lien Lenders and deemed consented to by the Second Lien Lenders pursuant to section 6.1, “Use of Cash Collateral and DIP Financing,” to the extent effective at the relevant time[, provided that any such documents or instruments to which any First Lien Claimholder is a party in connection with a DIP financing (other than a DIP financing deemed consented to by

Second Lien Lenders pursuant to section 6.1, “Use of Cash Collateral and DIP Financing ”) will not be deemed First Lien Loan Documents unless so designated in writing by First Lien Agent].

First Lien Obligations is defined in section 1.3(a).

Governmental Authority means any federal, state, municipal, national, or other government, governmental department, commission, board, bureau, court, agency, or instrumentality, or political subdivision thereof, or any entity or officer exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

Grantor is defined in the Preamble.

Guarantor Subsidiaries is defined in the Preamble.

Hedge Agreement means

- (p) an Interest Rate Protection Agreement, or
- (q) a foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap, or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with the operations of any Grantor,

in either case, to the extent that the incurrence of the obligations in respect thereof was permitted under the First Lien Loan Documents as in effect on the date hereof.

Holdings is defined in the Preamble.

Indebtedness means and includes all Obligations that constitute “Indebtedness” under the First Lien Credit Agreement or the Second Lien Credit Agreement, as applicable.

Insolvency Proceeding means

- (r) a voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to a Grantor,
- (s) any other voluntary or involuntary insolvency, reorganization, or bankruptcy case or proceeding, or any receivership, liquidation, reorganization, or other similar case or proceeding with respect to a Grantor or a material portion of its property,

- (t) a liquidation, dissolution, reorganization, or winding up of a Grantor, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or
- (u) an assignment for the benefit of creditors or other marshaling of assets and liabilities of a Grantor.

Interest Rate Protection Agreement means an interest rate swap, cap or collar agreement, or other similar agreement or arrangement designed to protect a Grantor against fluctuations in interest rates.

Letters of Credit is defined in section 1.4.

Lien means any lien (including, without limitation, judgment liens and liens arising by operation of law, subrogation, or otherwise), mortgage or deed of trust, pledge, hypothecation, assignment, security interest, charge, or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof), and any option, call, trust, U.C.C. financing statement, or other preferential arrangement having the practical effect of any of the foregoing, including any right of set-off or recoupment.

Modify, as applied to any document or obligation, includes

- (v) modification by amendment, supplement, termination, or replacement of the document or obligation,
- (w) any waiver of a provision (including waivers by course of conduct), and
- (x) the settlement or release of any claim, whether oral or written, and regardless of whether the modification is in conformity with the provisions of the document or obligation governing modifications.

New Agent is defined in section 4.4.

Obligations means all obligations of every nature of a Person owed to any obligee under an agreement, whether for principal, interest, or payments for early termination, fees, expenses, indemnification, or otherwise, and all guaranties of any of the foregoing, whether absolute or contingent, due or to become due, now existing or hereafter arising, and including interest and fees that accrue after the commencement by or against any Person of any proceeding under any Bankruptcy Law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

Party means a party to this Agreement.

Person means any natural person, corporation, limited liability company, trust, business trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

Pledged Collateral is defined in section 1.6(a).

Post-Petition Claims means interest, fees, costs, expenses, and other charges that pursuant to the First Lien Credit Agreement or the Second Lien Credit Agreement continue to accrue after the commencement of an Insolvency Proceeding, to the extent such interest, fees, expenses, and other charges are allowed or allowable under Bankruptcy Law or in the Insolvency Proceeding.

Proceeds means

- (y) all “proceeds,” as defined in Article 9 of the U.C.C., of the Collateral, and
- (z) whatever is recovered when Collateral is sold, exchanged, collected, or disposed of, whether voluntarily or involuntarily, including any additional or replacement Collateral provided during any Insolvency Proceeding and any payment or property received in an Insolvency Proceeding on account of any “secured claim” (within the meaning of section 506(b) of the Bankruptcy Code or similar Bankruptcy Law).

Purchase Date is defined in section 5.2(a)(5). *Purchase Event* is defined in section 5.1(a).

Purchase Notice is defined in section 5.2(a).

Purchase Obligations is defined in section 5.1(a).

Purchase Price is defined in section 5.3.

Purchasing Creditors is defined in section 5.2(a).

Recovery is defined in section 6.6.

Refinance means, for any Indebtedness, to refinance, replace, refund, or repay, or to issue other Indebtedness in exchange or replacement for such Indebtedness in whole or in part, whether with the same or different lenders, agents, or arrangers. “Refinanced” and “Refinancing” have correlative meanings.

Second Lien Adequate Protection Payments is defined in section 6.4(b)(4). *Second Lien Agent* is defined in the Preamble.

Second Lien Claimholders is defined in section 1.3(d).

Second Lien Collateral means all of the property of any Grantor, whether real, personal, or mixed, as to which a Lien is granted as security for a Second Lien Obligation.

Second Lien Collateral Documents means the [security] [Collateral] documents defined in the Second Lien Credit Agreement, and any other documents or instruments granting a Lien on real or personal property to secure a Second Lien Obligation or granting rights or remedies with respect to such Liens.

Second Lien Credit Agreement is defined in the Preamble.

Second Lien Lenders means the “Lenders” under and as defined in the Second Lien Loan Documents.

Second Lien Loan Documents means

- (aa) the Second Lien Credit Agreement and the “Loan Documents” defined in the Second Lien Credit Agreement,
- (bb) each other agreement, document, or instrument providing for, evidencing, guaranteeing, or securing an Obligation under the Second Lien Credit Agreement, and
- (cc) any other document or instrument executed or delivered at any time in connection with Borrower’s Obligations under the Second Lien Credit Agreement, including any guaranty of or grant of Collateral to secure such Obligations, and any intercreditor or joinder agreement to which holders of Second Lien Obligations are parties, to the extent effective at the relevant time.

Second Lien Obligations is defined in section 1.3(b).

Standstill Period is defined in section 3. 1(b)(1).

Subsidiary of a Person means a corporation or other entity a majority of whose voting stock is directly or indirectly owned or controlled by the Person. For these purposes, “voting stock” of a Person means securities or other ownership interests of the Person having general power under ordinary circumstances to vote in the election of the directors, or other persons performing similar functions, of the Person. References to a percentage or proportion of voting stock refer to the relevant percentage or proportion of the votes entitled to be cast by the voting stock.

U.C.C. means the Uniform Commercial Code (or any similar legislation) as in effect in any applicable jurisdiction.

8.2 USAGES

Unless otherwise stated or the context clearly requires otherwise:

Agents. References to First Lien Agent or Second Lien Agent will refer to First Lien Agent or Second Lien Agent acting on behalf of itself and on behalf of all of the other First Lien Claimholders or Second Lien Claimholders, respectively. Actions taken by

First Lien Agent or Second Lien Agent pursuant to this Agreement are meant to be taken on behalf of itself and the other First Lien Claimholders or Second Lien Claimholders, respectively.

Singular and plural. Definitions of terms apply equally to the singular and plural forms.

Masculine and feminine. Pronouns will include the corresponding masculine, feminine, and neuter forms.

Will and shall. “Will” and “shall” have the same meaning.

Time periods. In computing periods from a specified date to a later specified date, the words “from” and “commencing on” (and the like) mean “from and including,” and the words “to,” “until,” and “ending on” (and the like) mean “to but excluding.”

When action may be taken. Any action permitted under this Agreement may be taken at any time and from time to time.

Time of day. All indications of time of day mean [New York City] time.

Including. “Including” means “including, but not limited to.”

Or. “A or B” means “A or B or both.”

Statutes and regulations. References to a statute refer to the statute and all regulations promulgated under or implementing the statute as in effect at the relevant time. References to a specific provision of a statute or regulation include successor provisions. References to a section of the Bankruptcy Code also refer to any similar provision of Bankruptcy Law.

Agreements. References to an agreement (including this Agreement) refer to the agreement as amended at the relevant time.

Governmental agencies and self-regulatory organizations. References to a governmental or quasi-governmental agency or authority or a self-regulatory organization include any successor agency, authority, or self-regulatory organization.

Section references. Section references refer to sections of this Agreement. References to numbered sections refer to all included sections. For example, a reference to section 6 also refers to sections 6.1, 6.1(a), etc. References to a section or article in an agreement, statute, or regulation include successor and renumbered sections and articles of that or any successor agreement, statute, or regulation.

Successors and assigns. References to a Person include the Person’s permitted successors and assigns.

Herein, etc. “Herein,” “hereof,” “hereunder,” and words of similar import refer to this Agreement in its entirety and not to any particular provision.

Assets and property. “Asset” and “property” have the same meaning and refer to both real and personal, tangible and intangible assets and property, including cash, securities, accounts, and general intangibles.

SIGNATURES

First Lien Agent:

[NAME OF FIRST LIEN AGENT],

as First Lien Agent By:

Name:

Title:

[NOTICE ADDRESS]

Control Agent:

[NAME OF CONTROL AGENT],

as Control Agent By:

Name:

Title:

[NOTICE ADDRESS]

Second Lien Agent:

[NAME OF SECOND LIEN AGENT],

as Second Lien Agent By:

Name:

Title:

[NOTICE ADDRESS]

Acknowledged and Agreed to by: Borrower:

[NAME OF BORROWER]

By:

Name: Title:

[NOTICE OF ADDRESS]

Holdings:

[NAME OF HOLDINGS]

By:

Name: Title:

[NOTICE ADDRESS]

The other Grantors:

[NAME OF GRANTOR]

By:

Name: Title:

[NOTICE ADDRESS]

[NAME OF GRANTOR]

By:

Name: Title:

[NOTICE ADDRESS]

Faculty Biographies

Sara R. Borders is a partner with King & Spalding LLP's Financial Restructuring Practice Group in Atlanta. She is the leader of the firm's Capital Transactions and Real Estate Practice Group and also serves as a member of the firm's Policy Committee. Ms. Borders represents both creditors and debtors in restructurings and bankruptcy cases, as well as lenders and borrowers in a number of real estate financing transactions including term loans, revolving credit facilities, bridge loans, securitized financing and credit lease transactions. She has been included in the last several annual directories of *The Best Lawyers in America*, was recognized as one of Georgia's "Legal Elite" for each of the past five years, and *Chambers USA* continues to select her as a leading lawyer in her practice area. Ms. Borders received her B.S. from Louisiana State University and her J.D. from the University of Virginia.

M. Natasha Labovitz is a corporate partner and co-head of Devevoise & Plimpton LLP's Business Restructuring & Workouts Group in New York. Her practice focuses on corporate restructuring with an emphasis as debtor's counsel, and she has worked with a variety of clients including private-equity firm and portfolio companies, in complex corporate restructurings representing debtors and creditors in and out of bankruptcy, and in cross-border insolvencies across multiple jurisdictions. She is also a frequent author. Ms. Labovitz received her B.A. from Columbia University and her J.D. from New York University School of Law.

Shawn M. Riley is head of McDonald Hopkins LLC's Cleveland office, where he co-chairs the firm's Business Restructuring Services Department. He advises clients on strategic alternatives, including acquisitions, sales, mergers, affiliations, refinancing, recapitalizations and restructurings, and he has counseled boards of directors on meeting their fiduciary duties in a variety of circumstances. Mr. Riley has experience in a number of industries, including automotive, manufacturing, retail, casual dining, plastics, telecommunications and health care, including community and rural hospitals and long-term care. He has counseled businesses ranging in size from \$10 million in revenue to multi-billion dollar public companies. Although resident in (and the head of) the Cleveland office, Mr. Riley's clients are located throughout the Eastern United States. Mr. Riley has authored numerous articles and is a frequent lecturer, and from 2004-12, *Cincinnati* magazine selected him as an Ohio "Super Lawyer." He received his B.A. *magna cum laude* from Kent State University and his J.D. *magna cum laude* from Case Western Reserve University School of Law.

Brian I. Swett is a partner with McGuireWoods LLP's restructuring and insolvency practice in Chicago, where he represents a broad range of parties in complex bankruptcy and workout matters, including senior secured lenders and other creditors, companies (including debtors in possession), shareholders, investors, and sellers and purchasers in restructurings, both in and out of court. These representations have involved federal, district and bankruptcy court proceedings and appeals across the country. His experience includes a range of debtor-in-possession bankruptcy financing and cash-collateral matters in a wide range of industries, including structured facilities that provide liquidity and accommodate an extremely broad array of pre-bankruptcy capital structures. Mr. Swett has also represented parties in interest in transactions under the remedial provisions of the Uniform Commercial Code, including private sales, public sales and acceptances of collateral in exchange for the full or partial satisfaction of debt. In addition, he has overseen the acquisition of distressed assets. Mr. Swett is an active member of ABI and has published articles in the *ABI Journal*. He received both his B.A. in international relations and his M.A. in international relations with honors in oral examinations from Johns Hopkins University. In 1996, he received his J.D. from the New York University School of Law, where he served as a staff editor of the *Journal of International Law and Politics*.

How to Draft Loan Workout Agreements



MARCH 20, 2014

Overview

- **Who are the Key Players in a Workout?**
 - Company (Sean Reilly)
 - Senior Creditors (Sarah Borders)
 - Junior Creditors (Brian Swett)
- **What Agreements Are Often Used in a Workout Context?**
 - Confidentiality Agreements
 - Short-Term Waiver and/or Forbearance Agreements
 - Simple Amendment and Waiver
 - Restructuring Agreement
 - Intercreditor Agreement

Confidentiality Agreements

- **The Debtor's Key Goals**

- Share enough information to bring creditors on board with the workout.
- Avoid broad disclosure of confidential commercial information.

- **The Creditor's Perspective and Goals**

- Obtain relevant information.
- Avoid unwieldy information management requirements and restrictions on activities.

- **Key Moving Parts**

- Termination date
- Effect of termination
- Trading restriction?
- Limitation on use of confidential information?
- Other?

Waiver and Forbearance Agreements

- **Key Negotiating Issues**

- Waiver or forbearance?
- Length of period before termination; triggering event for termination?
- Conditions for the waiver/forbearance?
- Releases?
- Other terms? Documentation for guarantee?

- **Discussion Considerations**

- Is there a difference in perspective as between the senior and junior creditor?
- As a debtor, who are you negotiating with and how are you managing the relationship between the two creditors?

Simple Amendment and Waiver

- **When can a simple amendment be used to implement a workout?**
- **Key Moving Parts**
 - Amendment or Amendment-and-Restatement?
 - Scope of Waiver
 - Releases?
 - Conditions to effectiveness / ongoing conditions?

Restructuring Agreement

- **When is a restructuring support agreement necessary to implement a restructuring?**
- **Considerations for Use of RSA Framework**
 - Potential chapter 11 solicitation (prepackaged or prenegotiated plan)
 - Complicated restructuring that will take time to implement
- **Key Moving Parts**
 - What terms and documentation will be different if an RSA is used rather than a simple amendment?
 - Remedies for non-performance under RSA
 - Evidence Rule 408

Intercreditor Agreement

- **Key Negotiating Points**

- DIP financing (including cap)
- Use of cash collateral
- Adequate protection
- Sale of Assets
- Chapter 11 rights

- **Discussion Considerations**

- Is there a difference in perspective as between the senior and junior creditor?
- As a debtor, who are you negotiating with and how are you managing the relationship between the two creditors?