Hearing Date: August 9, 2012 at 10:00 a.m. (ET)
Objection Deadline: August 2, 2012 at 5:00 p.m. (ET)

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Counsel to the TSC Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR CORPORATION, *et al.*,[1]	)	Case No. 11-10612 (SHL)
Debtors.	)	Joint Administration Requested

NOTICE OF HEARING ON THE MOTION OF THE FEBRUARY DEBTORS AND THE GUARANTOR FOR ORDER (A) AUTHORIZING THE FEBRUARY DEBTORS TO OBTAIN POST-PETITION FINANCING AND (B) AUTHORIZING THE FEBRUARY DEBTORS TO USE CASH COLLATERAL

PLEASE TAKE NOTICE that on June 27, 2012, the TSC Debtors filed the *Motion of the February Debtors and the Guarantor for Order (A) Authorizing the February Debtors to Obtain Post-Petition Financing and (B) Authorizing the February Debtors to Use Cash Collateral* (the "***Motion***").

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal taxpayer-identification number, are: (a) TerreStar Corporation [6127]; and TerreStar Holdings Inc. [0778] (collectively, the "***February Debtors***") and (b) TerreStar New York Inc. [6394]; Motient Communications Inc. [3833]; Motient Holdings Inc. [6634]; Motient License Inc. [2431]; Motient Services Inc. [5106]; Motient Ventures Holding Inc. [6191]; MVH Holdings Inc. [9756] (collectively, the "***Other TSC Debtors***" and collectively, with the February Debtors, the "***TSC Debtors***").

PLEASE TAKE FURTHER NOTICE that a hearing (the "*Hearing*") to consider the Motion shall be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, on August 9, 2012 at 10:00 a.m. (prevailing Eastern Time) in Courtroom 701.

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure, the Local Rules of the Bankruptcy Court and the Bankruptcy Court's *Order Pursuant to Sections 105(a) and (d) of the Bankruptcy Code and Bankruptcy Rules 1015(c), 2002(m) and 9007 Implementing Certain Notice and Case Management Procedures* [Docket No. 12] (the "***Case Management Order***"), shall be filed with the Bankruptcy Court either (a) electronically in accordance with General Order M-399 (which can be found at http://www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's filing system, or (b) on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182 (which can be found at http://www.nysb.uscourts.gov), and shall be served in accordance with General Order M-399 on: (a) TerreStar Corporation, 344 Maple Avenue West, #275, Vienna, Virginia 22180, Attn: Doug Brandon, General Counsel; (b) counsel to the TSC Debtors, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Ira S. Dizengoff, Esq. and Arik Preis, Esq., and 1700 Pacific Ave., Suite 4100, Dallas, Texas 75201, Attn: Sarah Link Schultz, Esq.; (c) the Office of the United States Trustee for the Southern District of New York; (d) the entities listed on the TSC Debtors' Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (e) NexBank, SSB as agent for the

lenders under the Bridge Loan Agreement and as proposed agent for the TSC Debtors' proposed post-petition debtor-in-possession financing; (f) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners LLC and certain of its managed and affiliated funds; (g) Wachtell, Lipton, Rosen & Katz as counsel to the proposed agent for the TSC Debtors' proposed post-petition debtor-in-possession financing; (h) Richards Kibbe & Orbe LLP as counsel to West Face Long Term Opportunities Global Master L.P.; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; (k) the United States Attorney for the Southern District of New York; (l) the Federal Communications Commission; and (m) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002, in each case so as to be received no later than **August 2, 2012 at 5:00 p.m. (prevailing Eastern time)** (the "***Response Deadline***").

PLEASE TAKE FURTHER NOTICE that if no responses with respect to the Motion are timely filed and served in accordance with the Case Management Order, the TSC Debtors may, on or after the Response Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

New York, New York
Dated: June 27, 2012

/s/ *Ira S. Dizengoff*

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR CORPORATION, *et al.*,[1]	)	Case No. 11-10612 (SHL)
Debtors.	)	Joint Administration Requested

MOTION OF THE FEBRUARY DEBTORS AND THE GUARANTOR FOR ORDER (A) AUTHORIZING THE FEBRUARY DEBTORS TO OBTAIN POST-PETITION FINANCING AND (B) AUTHORIZING THE FEBRUARY DEBTORS TO USE CASH COLLATERAL

TerreStar Corporation ("***TSC***"), TerreStar Holdings Inc. ("***TS Holdings***") and Motient Ventures Holding Inc. (the "***Guarantor***" and, together with TSC and TS Holdings, the "***Credit Parties***"), seek the entry of a final order (the "***Order***"), substantially in the form attached hereto as Exhibit A (as described in more detail below), authorizing the Credit Parties to enter into that

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal taxpayer-identification number, are: (a) TerreStar Corporation [6127]; and TerreStar Holdings Inc. [0778] (collectively, the "***February Debtors***") and (b) TerreStar New York Inc. [6394]; Motient Communications Inc. [3833]; Motient Holdings Inc. [6634]; Motient License Inc. [2431]; Motient Services Inc. [5106]; Motient Ventures Holding Inc. [6191]; MVH Holdings Inc. [9756] (collectively, the "***Other TSC Debtors***" and collectively, with the February Debtors, the "***TSC Debtors***").

certain debtor in possession financing as set forth in the DIP Agreement (defined below) and to pay certain fees and expenses associated with such financing. In support of this motion, the Credit Parties respectfully state as follows:

I. RELIEF REQUESTED

1. By this motion (the "***DIP Motion***"), the Credit Parties request entry of the Order, pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(e) and 507 of title 11 of the United States Code (the "***Bankruptcy Code***"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the ***"Bankruptcy Rules"***) and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the ***"Local Rules"*** or ***"LBR"***):

(a) authorizing the February Debtors to obtain a $3,000,000 secured post-petition financing (minus any commitment fee plus other amounts to be capitalized, each in accordance with the terms of the DIP Documents (defined below)) (the ***"DIP Financing"*** and the loans thereunder, the ***"DIP Loans"***) pursuant to a debtor in possession financing agreement (the ***"DIP Agreement"***) by and among the February Debtors as borrowers, the Guarantor, and Solus Alternative Asset Management LP, Highland Capital Management, LP, West Face Long Term Opportunities Global Master L.P., Och-Ziff Capital Management Group, and their respective Affiliates and Approved Funds (as defined in the DIP Agreement), as lenders (collectively, the "***DIP Lenders***") and [NexBank, SSB] as agent (the "***DIP Agent***"), substantially in the form attached hereto as Exhibit B;

(b) authorizing the Credit Parties to execute and deliver the DIP Agreement and other related loan documents (collectively with all documents comprising the DIP Financing, the ***"DIP Documents"*** and the obligations thereunder, the ***"DIP Obligations"***) and to perform such other acts as the DIP Agent or the DIP Lenders determine may reasonably be necessary or desirable in connection with the DIP Documents;

(c) authorizing the February Debtors' use of the proceeds of the DIP Loans and cash collateral (as defined in Bankruptcy Code section 363(a), "***Cash Collateral***") to (i) pay fees and expenses associated with the DIP Financing, (ii) make one or more intercompany loans to certain subsidiaries of TSC and (iii) in accordance with the Budget (defined below), provide for the Credit Parties' ongoing working capital requirements, subject to the reasonable consent of the Requisite Lenders;

(d) pursuant to Bankruptcy Code section 364(c)(1), granting to the DIP Agent, for the benefit of the DIP Lenders, allowed senior administrative expense claims (the "***Superpriority Claims***") against the Credit Parties for the DIP Obligations which shall, except to the extent expressly set forth in the Order in respect of the Carve-Out (defined below), have priority over any and all administrative expenses, adequate protection claims and all other claims against the Credit Parties, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) and 507(b);

(e) granting to the DIP Agent, for the benefit of the DIP Lenders, the following security interests and liens on substantially all of the assets of the Credit Parties (all property identified in clauses (i) through (iv) below being collectively referred to as the "***DIP Collateral***"), subject only to the Carve-Out (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to the Order and the DIP Documents, the "***DIP Liens***"):

(i) pursuant to Bankruptcy Code section 364(c)(2), a fully perfected first priority security interest in and lien on all assets (tangible, intangible, real, personal and mixed, but subject to certain permitted encumbrances and the exclusion of assets on which the grant of such lien would be prohibited by law) in which one or more of the Credit Parties has an interest, whether existing on or after the February Petition Date (defined below or thereafter acquired), that is not subject to valid, perfected, non-avoidable and enforceable liens in existence on or as of the February Petition Date (collectively, and excluding any property that is excluded from the definition of "Collateral" in the DIP Agreement, the "***Unencumbered Property***"), any and all unencumbered cash (wherever located), accounts, accounts receivable, other rights to payment, inventory, general intangibles, contracts, contract rights, securities, chattel paper, owned real estate, real property leaseholds, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, instruments, investment property, goods, satellites, spare satellites, ground stations, commercial tort claims, proceeds from causes of action arising under chapter 5 of the Bankruptcy Code (including causes of action for preferences, fraudulent transfers and other avoidance power claims and any recoveries under Bankruptcy Code sections 506(c), 542, 544, 545, 547, 548, 549, 550, 552(b) and 553) proceeds from the disposition of Federal Communications Commission licenses (and the Federal Communications Commission licenses themselves, to the fullest extent permitted by applicable law), books and records and all other assets and properties of the February Debtors or the Guarantor, in each case, wherever located, and the proceeds, products, rents and profits of all of the foregoing, subject only to: (a) the Carve-Out and (b) the Prior Liens (defined below);

(ii) pursuant to Bankruptcy Code section 364(d)(1), a valid binding, continuing, enforceable, fully perfected, priming lien on and security interests in the collateral (the "***Bridge Loan Collateral***") under the February Debtors' pre-petition short-term financing (the "***Bridge Loan***"), which lien shall be senior in all respects to the liens granted in conjunction with the Bridge Loan (the "***Bridge Loan Liens***"), subject only to (i) the Carve-Out and (ii) the Prior Liens; and

(iii) pursuant to Bankruptcy Code section 364(c)(3), a valid, binding, continuing, enforceable, fully-perfected junior lien on, and security interest in, all tangible and intangible pre-petition and post-petition property in which one or more of the Credit Parties has an interest, whether now existing or hereafter acquired and all proceeds thereof, that is subject to non-avoidable, valid, enforceable and perfected liens that are senior in priority to the Bridge Loan Liens (such senior liens being the "***Prior Liens***") in existence on the February Petition Date, which security interest and lien shall be junior only to (i) the Prior Liens (but only to the extent such liens are properly perfected and secure valid and enforceable prepetition obligations and (ii) the Carve-Out, but senior to all other liens.

(f) upon execution of the DIP Agreement, authorizing the Credit Parties to pay the principal, interest, fees, expenses and other amounts payable under each of the DIP Documents as they become due, including, without limitation, the reasonable, actual and documented costs and expenses of the DIP Agent, all to the extent provided by and in accordance with the terms of the respective DIP Documents;

(g) authorizing the Credit Parties to use the Bridge Loan Collateral (defined below) and the granting of adequate protection to the lenders under the Bridge Loan (the "***Bridge Loan Lenders***") to protect against any diminution in the value of their respective interests in the Bridge Loan Collateral in the form of the Adequate Protection Lien (defined below), payment of interest under the Bridge Loan at the non-default rate, 507(b) Claims (defined below) and the right to credit bid; and

(h) vacating and modifying the automatic stay imposed by Bankruptcy Code section 362 to the extent necessary to (i) implement and effectuate the terms and provisions of the DIP Documents and the Order, and (ii) subject to paragraph 8 of the Order and the DIP Agreement, authorizing the DIP Agent and the DIP Lenders to, upon the occurrence and continuance of an Event of Default, among other things: (a) reduce the amount of or terminate any outstanding commitments under the DIP Agreement, (b) terminate the DIP Agreement, (c) charge the default rate of interest on the DIP Loans, (d) declare the entirety of the DIP Loans to be due and payable, (e) terminate the use of Cash Collateral and/or (f) subject to the Carve-Out, exercise any and all remedies under applicable law.

II. CONCISE STATEMENT PURSUANT TO BANKRUPTCY RULE 4001-2[2]

2. Pursuant to Bankruptcy Rules 4001(b), (c) and (d) and Local Bankruptcy Rule 4001-2, the following is a concise statement and summary of the proposed material terms of the DIP Documents and the Order:

DIP Financing Parties *Bankruptcy Rule 4001(c)(1)(B)*	**Borrowers:** TerreStar Corporation and TerreStar Holdings Inc. **Guarantor:** Motient Ventures Holding Inc. **DIP Agent:** [NexBank, SSB] **DIP Lenders:** Solus Alternative Asset Management LP, Highland Capital Management, LP, West Face Long Term Opportunities Global Master L.P., Och-Ziff Capital Management Group, and their respective Affiliates and Approved Funds (as defined in the DIP Agreement)
Term Commitments *Bankruptcy Rule 4001(c)(1)(B), LBR 4001-2(a)(1)*	$3,000,000 (minus any commitment fee plus other amounts to be capitalized, each in accordance with the terms of the DIP Documents). (Order at ¶ 4(a); DIP Agreement at Section 2.2(a)).
Maturity *Bankruptcy Rule 4001(c)(1)(B)*	The earliest of: (a) the date that is six (6) months after the Effective Date; (b) the effective date of a chapter 11 plan for the Borrowers; and (c) the consummation of the sale of all or substantially all of the assets of the Borrower. (DIP Agreement at Section 1.1 "Scheduled Termination Date").
Limits on Use of the DIP Facility *Bankruptcy Rule 4001(c)(1)(B), LBR 4001-2(a)(9)* **Use of Cash Collateral** *Bankruptcy Rule 4001(c)(1)(B), LBR 4001-(2)(a)(9)*	In accordance with the DIP Agreement, the proceeds of the DIP Financing and Cash Collateral shall be used by the February Debtors solely to (i) pay fees and expenses associated with the DIP Financing, (ii) make payments in accordance with the Budget (defined below) and (iii) make intercompany loans as provided under the DIP Agreement. (Order at ¶ 5; DIP Agreement at Section 4.12).
Interest Rate *Bankruptcy Rule 4001(c)(1)(B), LBR 4001-2(a)(3)*	**Interest Rate:** 10.5% per annum payable in cash and monthly in arrears. **Default Interest Rate:** The rate that would otherwise be applicable plus 2% per annum. (DIP Agreement at Section 2.8(a)).
Fees *Bankruptcy Rule 4001(c)(1)(B), LBR 4001-2(a)(3)*	**Commitment Fee:** The February Debtors shall pay to each DIP Lender a commitment fee equal to such DIP Lender's ratable portion of $60,000, which shall be fully earned and payable on the Effective Date and shall be paid in kind and on the Effective Date shall be capitalized and added to the principal amount of the loan outstanding. (DIP Agreement at Section 2.9(a)). **Administrative Agency Fee:** The February Debtors agree to pay to the Administrative Agent on the Effective Date an agency fee of $[15,000]. (DIP Agreement at Section 2.9(b)).

[2] This concise statement is qualified in its entirety by reference to the provisions of the DIP Agreement and the Order. To the extent of any inconsistency between this concise statement and the DIP Agreement, the DIP Agreement shall govern. Capitalized terms used but not otherwise defined in this summary shall have the meanings given to them in the DIP Agreement.

Budget *Bankruptcy Rule 4001(c)(1)(B)*	So long as any commitments remain outstanding under the DIP Financing, the February Debtors must operate within the Budget and the DIP Documents. (Order at ¶ 5(b); DIP Agreement at Section 5.2).
Milestone Requirements *Bankruptcy Rule 4001(c)(1)(B)(v)-(vii)*	The February Debtors and the Guarantor shall meet the following milestones, subject to the availability of the Bankruptcy Court, (a) on or prior to June 30, 2012, the Plan shall have been filed with the Bankruptcy Court; (b) on or prior to [_____], 2012[3], the Bankruptcy Court shall have entered an order confirming the Plan; and (c) on or prior to [_____], 2012[4], the Plan shall have become effective. (DIP Agreement at Section 6.13).
Covenants *Bankruptcy Rule 4001(c)(1)(B), LBR 4001-2(a)(8)*	The loan documentation will contain affirmative, negative and reporting covenants customary for financings of this type and other covenants appropriate to this specific transaction as agreed to by the February Debtors and the DIP Lenders, including, without limitation, the following: **Covenants:** Affirmative covenants including preservation of corporate existence, compliance with laws (including, without limitation, ERISA and environmental laws), payment of taxes, maintenance of insurance, access to the Credit Parties' books and records and to their properties, keeping of books, use of DIP Proceeds and certain plan milestones. Negative covenants including indebtedness that the Credit Parties can incur and liens that can be created, restrictions on investments and the sale of assets, and restrictions on fundamental changes and changes in the nature of the business. **Financial Reporting:** Among other things, TSC shall provide to each of the DIP Lenders, commencing from the two-week period ended July [__], 2012, so as actually to be received on the fifth Business Day after the end of each such two-week period, a variance report (a "Variance Report") certified by a Responsible Officer of TSC setting forth (A) the Borrowers' actual cash receipts and the aggregate expenses and disbursements for such immediately preceding two-week period (provided, however, that the initial Variance Report provided by TSC shall set forth actual cash receipts and the aggregate operating expenses and disbursements for the period since the Effective Date), (B) the variance in dollar amounts of the Borrowers actual aggregate expenses and disbursements from those reflected for the corresponding period in the Budget over (i) the preceding two-week period and (ii) the period from the Effective Date through the end of the two-week period immediately preceding the date on which such Variance Report is required to be delivered and (C) a detailed explanation of all such variances. (See DIP Agreement at Section 5.6).

[3] This date will be the 4 month anniversary of Effective Date.

[4] This date will be the 6 month anniversary of Effective Date.

Liens and Priorities *Bankruptcy Rule 4001(c)(1)(B), LBR 4001-2(a)(4)*	**Liens:** The Credit Parties grant the following as collateral securing all DIP Financing obligations, subject to the Carve-Out: **Liens on DIP Collateral:** (i) Pursuant to section 364(c)(2), a fully perfected first priority security interest in and lien on the Unencumbered Property; (ii) pursuant to section 364(d)(1), a fully perfected first priority security interests in and priming liens on the Bridge Loan Collateral and (iii) pursuant to Bankruptcy Code section 364(c)(3), junior liens on property secured by Prior Liens (to the extent such liens are properly perfected and secure valid and enforceable obligations), subject to the Carve-Out. (Order at ¶ 7; DIP Agreement at Section 4.19) **Future Property:** The DIP Collateral includes all property and assets of the Credit Parties and their estates, real and personal, tangible and intangible, including all causes of action (subject to the limitation noted below and the exclusion of assets on which the grant of such lien would be prohibited by law), whether owned as of the February Petition Date or after acquired or arising, and regardless of where located or by whomsoever held, and whether now owned or in which the Credit Parties have any interest or hereafter acquired or in which the Credit Parties obtain an interest. (Order at ¶ 7; DIP Agreement at Section 4.19). **Avoidance Actions: The DIP Collateral shall include the proceeds of any of the Credit Parties' claims and causes of action arising under Bankruptcy Code sections 542-553 (collectively, the "*Avoidance Actions*"). This constitutes an "extraordinary provision" (a "*Material Provision*") under General Order M-274 of the United States Bankruptcy Court for the Southern District of New York.** (Order at ¶ 7). **Priorities:** Pursuant to Bankruptcy Code section 364(c)(1), obligations under the DIP Financing constitute superpriority administrative expenses in the Credit Parties' chapter 11 cases. (Order at ¶ 6; DIP Agreement at Sections 4.19 and 11.8(e)).
Carve-Out *LBR 4001-2(a)(5), 4001-2(d)*	The "***Carve-Out***" applies to: (i) all fees required to be paid by any of the Credit Parties to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code; (ii) fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) all allowed reasonable and documented professional fees and expenses incurred by the February Debtors or a statutory committee (if any) prior to an Event of Default that are payable under sections 330 and 331 of the Bankruptcy Code, subject to entry of a customary order of the Bankruptcy Court; and (iv) the payment of all allowed reasonable and documented professional fees and expenses incurred by the February Debtors or a statutory committee after the occurrence of the Event of Default that are payable under sections 330 and 331 of the Bankruptcy Code in an aggregate amount not in excess of $400,000 (plus all unpaid professional fees and expenses allowed by this Court that were incurred prior to the occurrence of such Event of Default); (Y) so long as no Event of Default shall have occurred and be continuing, the February Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under Bankruptcy Code sections 328, 330 and 331, as the same may be due and payable, in accordance with the Budget, and the same shall not reduce the Carve-Out; and (Z) nothing in the Order shall impair the right of any party to object to the reasonableness of any such fees or expenses to be paid by the February Debtors' estates. (Order at ¶ 6; DIP Agreement at Section 1.1, "Carve-Out")).
Adequate Protection for Pre-petition Lenders *Bankruptcy Rules 4001(b)(1)(B)(iv) and 4001(c)(1)(B)(ii), LBR 4001 2(a)(4)*	As described in more detail below, the interests of the holders of the Prior Liens, if any, and the Bridge Loan Lenders are adequately protected as the value of the February Debtors' assets greatly exceeds the amount of secured debt encumbering such assets. As further adequate protection, the Bridge Loan Lenders will be granted an Adequate Protection Lien (defined below), payment of interest on the Bridge Loan at the default rate, 507(b) Claims (defined below) and the right to credit bid. (Order at ¶ 13).
Events of Default *Bankruptcy Rule*	The DIP Agreement will contain usual and customary events of default, including, but not limited to, payment, cross-default, violation of covenants, breach of representations or warranties,

4001(c)(1)(B), LBR 4001-2(a)(10)	bankruptcy or insolvency (with respect to TerreStar 1.4), judgment, ERISA, environmental, and change of control. (DIP Agreement at Section 8.1). In addition, an event of default shall occur if: any of the TSC Debtors' cases shall be dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of the TSC Debtors' cases), suspended or converted to a case under chapter 7 of the Bankruptcy Code, or any Credit Party shall file any pleading requesting any such relief; or an application shall be filed by any Credit Party for the approval of, or there shall arise, (i) any other claim having priority senior to or *pari passu* with the claims of the Administrative Agent and the DIP Lenders under the DIP Documents or any other claim having priority over any or all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) or 507(b) (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except as expressly provided herein. (DIP Agreement at Section 8.1(m)).
Waiver or Modification of the Automatic Stay *Bankruptcy Rule 4001(c)(1)(B) LBR 4001-2(a)(10)*	The automatic stay is vacated to permit the exercise of remedies by the DIP Agent; *provided*, that the DIP Agent may only exercise rights and remedies against DIP Collateral upon the provision of five (5) business days' prior notice to the Credit Parties and certain other parties. (Order at ¶ 8).
Waivers/Modification Regarding Perfection or Enforcement of a Lien *Bankruptcy Rule 4001(c)(1)(B)(viii)*	The Order is effective to create in favor of the DIP Lenders legal, valid, enforceable and fully perfected security interests in and liens on the DIP Collateral. (Order at ¶ 7).
Change of Control *LBR 4001-2(a)(11)*	The occurrence of a change of control constitutes an event of default under the DIP Financing. (DIP Agreement at Section 8.1(j)).
Joint Liability *LBR 4001-2(a)(14), 4001-2(e)*	The February Debtors are the borrowers and the Guarantor is the guarantor under the DIP Financing. (DIP Agreement at Preamble).
Funding of Non-Debtor Affiliates *LBR 4001-2(a)(15)*	The proceeds of the DIP Financing may be used to make one or more intercompany loans to certain Co-Debtors, TerreStar Global Ltd. and TerreStar 1.4 Holdings LLC in an aggregate amount not to exceed $[60,000] or, with the consent of the Requisite Lenders, a greater amount (DIP Agreement at Section 4.12).
Indemnification *Bankruptcy Rule 4001(c)(1)(B)(ix)*	The Credit Parties shall indemnify the Administrative Agent, the DIP Lenders and each of their affiliates and each of their directors, officers, employees and agents pursuant to customary indemnification provisions. (DIP Agreement at Section 13.4).
Conditions to Closing and Initial Borrowing *Bankruptcy Rule 4001(c)(1)(B), LBR 4001-2(a)(2) and 4001-2(h)*	The DIP Agreement contains conditions precedent to the DIP Lenders' obligations under the DIP Financing. (Order at ¶ 5; DIP Agreement at Section 3.1).

3. As set forth herein, these provisions were thoroughly negotiated and are necessary for the February Debtors to effectuate the DIP Financing and procure such financing in a sufficient amount and on a timely basis.

III. PRELIMINARY STATEMENT

4. By the DIP Motion, the Credit Parties are seeking authority to enter into a debtor in possession financing facility in the amount of $3,000,000 (minus any commitment fee plus other amounts to be capitalized, each in accordance with the terms of the DIP Documents), under which the February Debtors will be the borrowers and which will be guaranteed by the Guarantor, one of the Other TSC Debtors. The DIP Financing is intended to provide the necessary financing required for the February Debtors to further their reorganization efforts and successfully exit from chapter 11.

5. The February Debtors' budget projections show that, absent access to the proposed DIP Financing, the February Debtors will not be able to safeguard their assets, and will have insufficient cash to satisfy their expenses, for more than a brief period during these chapter 11 cases and will be forced to liquidate assets to the detriment of all parties in interest in these chapter 11 cases. Approval of the DIP Financing will allow the February Debtors to, among other things, successfully exit from chapter 11.

6. As discussed in more detail below (as well as in the various declarations filed in connection herewith), the February Debtors' decision to enter into the proposed DIP Financing is the culmination of an intense, several month process targeted at procuring the necessary DIP Financing to allow the February Debtors to proceed with a chapter 11 exit strategy. The DIP Financing is being provided by those parties who are also the TSC Debtors' largest preferred shareholders, and two of whom also hold 2/3 of the claims against the Debtors in their capacity as lenders under the Bridge Loan. As part of the DIP Financing, these parties have formally agreed to support the plan of reorganization (as filed concurrently herewith) that provides the TSC Debtors with an exit strategy that is in the best interests of their creditors, and have represented to the TSC Debtors (subject to definitive documentation) that they will provide the

necessary exit financing for the TSC Debtors to emerge from chapter 11. As a result of this, although the TSC Debtors actively marketed the DIP Financing, parties were reluctant to spend the time and effort that would be necessary to compete with this group of preferred shareholders for such a small—although materially important for the TSC Debtors—amount of financing, with the knowledge that such third parties could not provide the TSC Debtors any assurance of a confirmable exit strategy. In recognition of this, moreover, the TSC Debtors also approached Elektrobit Inc. ("***Elektrobit***")—their largest purported unsecured creditor—to inquire as to their interest in providing DIP Financing, but Elektrobit was similarly uninterested. Therefore, not only have the TSC Debtors achieved the best financing terms available (as set forth herein), as further explained herein, the TSC Debtors they have also ensured themselves a path toward exit from chapter 11 despite the recent termination of the Spectrum Lease (as defined below) with One Dot Four Corp.

IV. BACKGROUND

A. The TSC Debtors' Chapter 11 Cases

7. On October 19, 2010 (the "***October Petition Date***") and February 16, 2011 (the "***Petition Date***"), the Other TSC Debtors[5] and the February Debtors, respectively, filed petitions with this Court under chapter 11 of the Bankruptcy Code. The TSC Debtors are operating their business and managing their property as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

8. On October 29, 2010, the United States Trustee for the Southern District of New York (the "***U.S. Trustee***") appointed an official committee of unsecured creditors (the "***TSN***

[5] Also on the October Petition Date, TerreStar Networks Inc. ("***TSN***") and certain of its affiliated debtors (collectively, the "***TSN Debtors***," and together with the Other TSC Debtors, the "***October Debtors***") each filed a petition with this Court under chapter 11 of the Bankruptcy Code.

Committee") of the October Debtors.[6] No statutory committees have been appointed or designated in the February Debtors' cases.

9. A detailed description of the TSC Debtors' business and the reasons for filing these chapter 11 cases is set forth in the Disclosure Statement (defined below).

10. On October 20, 2010, the Court entered an order providing for the joint administration of the Other TSC Debtors' cases with the October Debtors' cases for procedural purposes styled as *In re TerreStar Networks Inc., et al.*, Case No. 10-15546 (SHL). Contemporaneously with the filing of the petitions for the February Debtors, the Other TSC Debtors requested that their cases be de-consolidated from the cases of the October Debtors, and the TSC Debtors sought procedural consolidation and joint administration of the chapter 11 cases of the Other TSC Debtors and the February Debtors under the case of TSC. On February 23, 2011, the Court entered orders amending joint administration of the October Debtors' chapter 11 cases and providing for the joint administration of the TSC Debtors' cases for procedural purposes, styled as *In re TerreStar Corporation, et al.*, Case No. 11-10612 (SHL).

11. On January 12, 2012, the TSC Debtors filed the *Second Amended Disclosure Statement for the Second Amended Joint Chapter 11 Plan of TerreStar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Holdings Inc. and TerreStar New York Inc.* [Docket No. 338] (as amended, the "***Disclosure Statement***"). At a hearing held on January 10, 2012, the Court approved the Disclosure Statement on the record. On January 12, 2012, the TSC Debtors also filed the *Second Amended Joint Chapter 11 Plan of TerreStar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc.,*

[6] The TSN Debtors have confirmed and consummated their chapter 11 plan. Therefore, the TSN Committee is no longer in existence.

Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Holdings Inc. and TerreStar New York Inc. [Docket No. 336].

12. On June 7, 2012, Elektrobit filed a motion requesting that the Court set a status conference in the TSC Debtors' cases and enter an order establishing a schedule for consideration of the TSC Debtors' proposed plan [Docket No. 489]. A hearing on this motion is currently scheduled for July 2, 2012

13. Contemporaneously with the filing of this DIP Motion, the TSC Debtors have also filed the (a) *Third Amended Joint Chapter 11 Plan of TerreStar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Holdings Inc. and TerreStar New York Inc.* (as amended, the "***Plan***") and (b) *Motion for Entry of an Order: (A) Approving First Supplement to the Second Amended Disclosure Statement for the Third Amended Joint Chapter 11 Plan of the TSC Debtors; (B) Approving Related Notice and Objection Procedures; (C) Approving Amended Forms of Ballots for the Solicitation of Votes To Accept or Reject the Third Amended Plan; and (D) Scheduling Confirmation Hearing* (the "***Disclosure Statement Motion***"), which seeks approval of the TSC Debtors' proposed first supplement to the Disclosure Statement and solicitation materials and procedures in connection thereto. The TSC Debtors have also requested a hearing on the Disclosure Statement Motion in late July or early August.

B. The Bridge Loan

14. On November 19, 2010, TSC, as borrower and TS Holdings, as guarantor, entered into that certain Term Loan Credit Agreement in a principal aggregate amount of $2.65 million (as amended, restated, amended and restated, supplemented, or otherwise modified, the "***Bridge Loan Agreement***"), which contained certain restructuring milestones. As of the Petition Date,

approximately $4.3 million of principal and accrued interest was outstanding under the Bridge Loan Agreement (the "***Bridge Loan***").

C. The Spectrum Lease Agreement

15. As set forth more fully in the Disclosure Statement, TSC's main asset is its equity interest in TS Holdings. TerreStar 1.4, which is not a TSC Debtor, is a wholly-owned subsidiary of TS Holdings. TerreStar 1.4 holds the rights to use 1.4 GHz terrestrial spectrum pursuant to 64 FCC licenses.

16. In September 2009, 1.4 Holdings entered into a lease agreement (the "***Spectrum Lease***")[6] with One Dot Four Corp. ("***One Dot Four***"), a subsidiary of LightSquared, Inc. ("***LightSquared***"),[7] whereby One Dot Four leased the rights to use the 1.4 Spectrum for which 1.4 Holdings holds the FCC Licenses. Pursuant to the Spectrum Lease, One Dot Four was obligated to pay 1.4 Holdings $2 million per month on the first day of each month (each, a "***Lease Agreement Payment***"). Until its termination, this cash flow stream represented the TSC Debtors' main source of revenue. On or about April 1, 2012, however, One Dot Four defaulted on its Lease Agreement Payment due 1.4 Holdings. As a result, 1.4 Holdings issued a notice of default to One Dot Four with respect to the Spectrum Lease on April 3, 2012. Thereafter, One Dot Four and 1.4 Holdings agreed to terminate the Spectrum Lease as of April 20, 2012.

17. Because the 1.4 Spectrum is no longer encumbered by the Spectrum Lease,[8] the TSC Debtors, in the exercise of prudent business judgment are exploring their options with

[6] The lease agreement entered into in September 2009 was a spectrum manager lease agreement. In July 2010, 1.4 Holdings and One Dot Four sought and received FCC consent to replace the spectrum manager lease agreement with a long-term de facto transfer lease agreement, which was amended on October 13, 2010.

[7] LightSquared (f/k/a SkyTerra Communications, Inc.) is an affiliate of Harbinger Capital Partners LLC.

[8] Recently, 1.4 Holdings entered into a short-term lease agreement with FirstEnergy Service Company ("***FirstEnergy***") whereby FirstEnergy is leasing the right to use a geographically small portion of the 1.4 Spectrum. This lease will provide the TSC Debtors with approximately $40,000 per month in revenue.

respect to extracting value from their indirect ownership of the 1.4 Spectrum. In connection therewith, on June 15, 2012, the TSC Debtors filed the *TSC Debtors' Motion for an Order Authorizing Entry into a Consulting Agreement with RKF Engineering Solutions, LLC* [Docket No. 497] (the "***RKF Motion***"). A hearing on the RKF Motion is currently scheduled for July 2, 2012.

D. The TSC Debtors' Initial DIP Facility

18. On the Petition Date, the TSC Debtors sought approval of ongoing access to cash collateral as well as approval to enter into an aggregate $13,368,421.05 secured debtor-in-possession financing facility (the "***Initial DIP Facility***"), with TSC and TS Holdings as borrowers and MV Holding as guarantor. The Initial DIP Facility was secured by a first lien on all of the February Debtors' assets, subject to certain existing liens and carried a 12.5% interest rate. The Initial DIP Facility contained negative and affirmative covenants standard for debtor-in possession financing facilities, as well as various operational performance covenants and various events of default. On March 9, 2011, the Court entered an order approving the TSC Debtors' entry into the Initial DIP Facility on a final basis.

19. Pursuant to the terms of the Initial DIP Facility, funds received under the Spectrum Lease Agreement and upstreamed to TSC were to be used to repay the Initial DIP Facility on a quarterly basis. The Initial DIP Facility was repaid and satisfied in full on January 3, 2012.

E. The Elektrobit Claim

20. Elektrobit and TSN entered into a Master Development and Licensing Agreement, dated August 10, 2007 (the "***Development Agreement***"), whereby Elektrobit agreed to develop mobile telephone handsets for TSN. In 2009, TSC purportedly guaranteed TSN's obligations to Elektrobit under the Development Agreement. On March 23, 2011, the Court

approved the rejection of the Development Agreement by both the TSC Debtors [Docket No. 57] and the TSN Debtors [Case No. 10-15546, Docket No. 498].

21. On or about April 20, 2011, Elektrobit filed a proof of claim against TSC asserting, among other things, a general unsecured claim for damages in the amount of approximately $24.8 million arising from TSC's purported guarantee of TSN's obligations under the Development Agreement. The TSC Debtors filed an objection to Elektrobit's claim on November 16, 2011 [Docket No. 275],[7] and Elektrobit filed a response on December 12, 2011 [Docket No. 296] and a related motion to approve a case management order in connection with the objection to its claims [Docket No. 297]. On January 25, 2012, the Court entered an order approving a case management order regarding Elektrobit's claim, which was negotiated by the TSC Debtors, Elektrobit, and certain of TSC's preferred shareholders [Docket No. 353] (the "***Elektrobit Order***").

22. A significant portion of the professional fees in the TSC Debtors' cases have been incurred as a result of discovery conducted pursuant to the Elektrobit Order. In an effort to explore potential settlement options and to avoid incurring additional litigation expenses, in March 2012, Elektrobit and the TSC Debtors agreed to toll discovery and litigation regarding Elektrobit's claim, subject to certain exceptions through April 12, 2012. The TSC Debtors and Elektrobit also agreed to modify the Elektrobit Order to provide that the deadlines set forth therein are to be determined at a later time. As stated on the record at the April 12, 2012 omnibus hearing, the parties are continuing to engage in settlement negotiations.

[7] Certain of TSC's preferred shareholders also filed an objection to Elektrobit's claim on November 16, 2011 [Docket No. 276].

V. JURISDICTION AND VENUE

23. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

VI. THE PROPOSED DIP FINANCING

A. The February Debtors' Need for Post-Petition Financing

24. As described more fully in the *Declaration of Jeffrey W. Epstein Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Pleadings* (the "***First Day Affidavit***") and the declaration of Steven W. Zelin in support of the DIP Motion (the "***Zelin Declaration***"), attached hereto as Exhibit C, the February Debtors do not generate sufficient cash to cover their expenses and require additional funds. *See* First Day Affidavit at ¶ 6; Zelin Declaration at ¶ 6.

25. The February Debtors have worked with their financial advisors, Blackstone Advisory Partners L.P. (***"Blackstone"***), continually to analyze their cash needs in an effort to determine what is necessary to both maintain their business in chapter 11 and to work towards an exit from chapter 11. As part of the February Debtors' recent financial analysis and projections, the February Debtors developed a weekly cash flow forecast for the next 6 months, which takes into account anticipated cash receipts and disbursements during that time. *See* Zelin Declaration at ¶¶ 9-10.

26. As described above, the TSC Debtors' (including the February Debtors') primary source of revenue has been the stream of lease payments pursuant to the Spectrum Lease Agreement. However, because One Dot Four defaulted on its Lease Agreement Payments due to 1.4 Holdings, the Spectrum Lease was terminated as of April 20, 2012. Currently, the TSC Debtors are receiving only minimal payments under a lease of a geographically small portion of

the 1.4 Spectrum pursuant to a short-term lease agreement with FirstEnergy Service Company.[8] Accordingly, absent approval of the proposed DIP Financing, the February Debtors do not currently have a sufficient source of revenue with which to pay their day-to-day expenses or take actions necessary for the successful completion of these cases. *See* Zelin Declaration at ¶ 9.

27. The February Debtors' budget projections show that, without the proposed DIP Financing, the February Debtors will have insufficient cash to operate their business in the ordinary course by September 2012. Further, and importantly, without access to the DIP Financing, the February Debtors' current cash on hand and cash generated will be insufficient to, among other things, fund their emergence from chapter 11 and preserve the value of the February Debtors' assets. Approval of the DIP Financing will allow the February Debtors to avoid the accrual of unpaid administrative expenses and will allow the February Debtors to maximize the value of their estates and the ultimate recoveries to their creditors and stakeholders. *See* Zelin Declaration at ¶¶ 9-10.

B. The February Debtors' Efforts to Obtain Further Post-Petition Financing

28. Since prior to February 2012, the Credit Parties have been in discussions with certain parties in connection with providing a financing facility that would allow the TSC Debtors to consummate a successful exit from these chapter 11 cases. Ultimately, in May 2012, the Credit Parties decided to continue further negotiations with the DIP Lenders, who were willing to provide the February Debtors a debtor-in-possession financing facility that will allow

[8] The current lease of the 1.4 Spectrum only provides the TSC Debtors with approximately $40,000 per month in revenue.

the February Debtors to maximize the recoveries to their creditors and stakeholders.[9] *See* Zelin Declaration at ¶¶ 11-12.

29. Prior to and during the negotiations, the TSC Debtors and their advisors analyzed various DIP financing structures, evaluated the February Debtors' need for financing (*i.e.*, amount, type, etc.) and carefully weighed the effect that the February Debtors' pre-petition capital structure (specifically, the Bridge Loan) would have on both its ability to attain DIP financing as well as ultimately exit from chapter 11. In considering all of its options, the February Debtors recognized that substantially all of the February Debtors' assets served as security for the Bridge Loan, such that either (i) the liens securing the Bridge Loan would have to be "primed" to obtain post-petition financing, (ii) the February Debtors would have to find a post-petition lender willing to extend credit to pay off the Bridge Loan or (iii) the February Debtors would have to find a post-petition lender willing to extend credit on a junior basis. *See* Zelin Declaration at ¶ 13.

30. In light of the above, and after considering all other options, the Credit Parties determined that the proposal by the DIP Lenders, which provides for the consensual priming of the Bridge Loan Liens with respect to a majority (but not all) of the Bridge Loan Lenders, was in the best interests of the Credit Parties and all of their stakeholders. Specifically, the Credit Parties concluded that the DIP financing proposal that is the subject of this DIP Motion was superior to all other options because, among other things, it provides the February Debtors with the financing necessary to preserve the value of their assets during these chapter 11 cases.

[9] The Credit Parties' advisors also reached out to various parties, including Elektrobit, to determine if such parties would be interested in providing such post-petition financing. Ultimately, however, these discussions did not prove fruitful. *See* Zelin Declaration at ¶ 11. Importantly, many parties simply did not want to get involved in making a small loan to a company that would either be held by the DIP Lenders (in their capacity as preferred shareholders of TSC) upon consummation of a plan.

Importantly, the DIP Financing will provide the February Debtors with the cash necessary to finance the remainder of their chapter 11 cases in light of the termination of the Spectrum Lease Agreement. *See* Zelin Declaration at ¶¶ 14-15.

31. Based on these factors, and in light of the fair and thorough negotiation process undertaken by the Credit Parties, the DIP Financing is the only current feasible post-petition financing option for the February Debtors and is in the best interests of the Credit Parties' estates.

C. Implementation of the DIP Agreement

32. The DIP Agreement will allow the February Debtors to draw on a $3,000,000 commitment (minus any commitment fee plus other amounts to be capitalized, each in accordance with the terms of the DIP Documents) from the DIP Lenders. This commitment should allow the February Debtors to meet all of their administrative obligations during these chapter 11 cases while at the same time making the necessary expenditures that are critical to the February Debtors' successful exit from chapter 11.

33. The February Debtors and DIP Lenders will agree to a 6-month cash flow projection, a copy of which shall be annexed to the proposed Order as Exhibit B (as defined in the DIP Agreement, the "***Budget***"), which will govern the February Debtors' expenditures on working capital requirements. The February Debtors believe that they will negotiate an achievable budget with the DIP Lenders and that such budget will allow the February Debtors to avoid the accrual of unpaid administrative expenses and maximize the value of their estates and the ultimate recoveries to their creditors and stakeholders. *See* Zelin Declaration at ¶ 10.

VII. SUPPORTING AUTHORITY

34. The success of the TSC Debtors' reorganization efforts (including the February Debtors) and recoveries to the TSC Debtors' stakeholders hinge upon obtaining access to

financing since, absent access to the financing, the February Debtors will not be able to maintain their business for the remainder of these chapter 11 cases or provide a meaningful recovery to their creditors and stakeholders. At this time, the February Debtors request authorization to borrow $3,000,000.00 (minus any commitment fee plus other amounts to be capitalized, each in accordance with the terms of the DIP Documents), consistent with the DIP Documents and to use such proceeds to maintain their business during the pendency of these chapter 11 cases.

35. As set forth in detail above, the DIP Financing is the best financing available to the February Debtors at this time. The February Debtors have been unable to procure sufficient financing: (a) in the form of unsecured credit allowable under Bankruptcy Code section 503(b)(l); (b) solely as an administrative expense under Bankruptcy Code sections 364(a)-(b) or (c) in exchange solely for the grant of a superpriority administrative expense claim pursuant to Bankruptcy Code section 364(c). *See* Zelin Declaration at ¶ 17. Thus, based on the foregoing and for the reasons set forth below, the February Debtors submit that they have satisfied the requirements to access post-petition financing on a superpriority, secured basis pursuant to Bankruptcy Code section 364.

A. The February Debtors Should Be Authorized to Obtain Post-Petition Financing Under Bankruptcy Code Section 364

(i) Financing Under Bankruptcy Code Section 364(c) is Appropriate

36. Pursuant to Bankruptcy Code section 364(c), a court may authorize a debtor to incur debt that is (a) entitled to a superpriority administrative expense status; (b) secured by a lien on otherwise unencumbered property or (c) secured by a junior lien on encumbered property if the debtor cannot obtain post-petition credit on an unsecured basis, on an administrative expense priority or secured solely by junior liens on the debtor's assets. *See* 11 U.S.C.

§ 364(c);[10] *In re Barbara K. Enters, Inc.*, No. 08-11474 (MG), 2008 WL 2439649, at *8 (Bankr. S.D.N.Y. June 16, 2008) (in order for a debtor to obtain post-petition secured credit under section 364, the debtor must prove that it was unable to reasonably obtain secure credit elsewhere); *Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense).

37. Courts in this jurisdiction and others have fashioned guidelines in applying these statutory requirements. Generally, courts advocate using a "holistic approach" to evaluate superpriority post-petition financing agreements, which focuses on the transaction as a whole. As one court has noted:

> Obtaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor's estate and . . . the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere.

In re Aqua Assocs., 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991); *see also In re YL W. 87th Holdings I LLC*, 423 B.R. 421, 442 (Bankr. S.D.N.Y. 2010).

38. More specifically, in evaluating a debtor's proposed post-petition financing, courts consider whether the post-petition financing: (a) is necessary to preserve the assets of the

[10] Specifically, Bankruptcy Code section 364(c) provides, in pertinent part, that:

> If the trustee [or debtor in possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt – (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title; (2) secured by a junior lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

estate and is necessary, essential and appropriate for continued operation of the debtor's business; (b) is in the best interests of the debtor's creditors and estates; (c) is an exercise of the debtor's sound and reasonable business judgment; (d) was negotiated in good faith and at arm's length between the debtor, on the one hand, and the agents and the lenders on the other and (e) contains terms that are fair, reasonable and adequate given the circumstances of the debtor and the proposed post-petition lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) *cited in* Tr. of Rec. at 733:3-6, *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. Feb. 27, 2009)[11]; *see also In re Barbara K. Enters., Inc.*, 2008 WL 2439649 at *10; *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990).

39. The February Debtors propose to obtain the financing as provided for in the DIP Documents by providing, among other things, superpriority claims, security interests and liens pursuant to Bankruptcy Code sections 364(c)(1)–(3) and Bankruptcy Code section 364(d). For the reasons set forth below, Credit Parties submit that entry into the DIP Financing satisfies each of these factors.

(ii) The Priming of the Bridge Loan Liens Under Bankruptcy Code Section 364(d) is Appropriate

40. A priming lien can be granted in one of two ways – one, with the consent of the secured creditor who is being primed or two, if the February Debtors are able to show that the requirements of Bankruptcy Code section 364(d) have been satisfied. Under the DIP Agreement, the DIP Agent, on behalf of the DIP Lenders, is being granted priming liens on, and security interests in, the Bridge Loan Collateral. To be clear, while the DIP Liens on the Bridge Loan Collateral will prime, and be senior in all respects to, the security interests in, and liens on, the

[11] Because of the voluminous nature of the orders and transcripts cited herein, they are not attached to the DIP Motion. Copies of all orders and transcripts cited herein are available on request of the TSC Debtors' counsel.

Bridge Loan Collateral, they will be junior to any Prior Liens, although the February Debtors do not believe any Prior Liens exist.

41. A majority of the Bridge Loan Lenders have consented to the Bridge Loan Collateral being primed by the DIP Liens. Accordingly, the Debtors submit that, with respect to these lenders, no showing under Bankruptcy Code section 364(d) is required and request that the Court approve the grant of the priming liens on the Bridge Loan Collateral with respect to those Bridge Loans held by the consenting Bridge Loan Lenders.

42. Further, Bankruptcy Code section 364(d) provides an alternate way in which a priming lien can be granted. Specifically, Bankruptcy Code section 364(d)(1) provides that a court may grant a priming lien if (A) debtor in possession financing cannot be obtained otherwise and (B) there is adequate protection of the interest of the holder of such lien. As explained above, the February Debtors are unable to otherwise obtain financing from an alternative source without priming the existing security interests. Further, the interests of both the Bridge Loan Lenders are adequately protected as the value of the Bridge Loan Collateral greatly exceeds the amount of secured debt encumbering such assets. *See* Zelin Declaration at ¶¶ 17-18. Therefore, granting priming liens on the Bridge Loan Collateral is appropriate. Nevertheless, the TSC Debtors are also providing adequate protection to the Bridge Loan Lenders in the form of the Adequate Protection Lien (as defined below), payment of interest under the Bridge Loan at the non-default rate, 507(b) Claims (as defined below) and the right to credit bid.

B. The DIP Financing Was Negotiated in Good Faith and Entry into the DIP Financing is in the Best Interests of the February Debtors' Creditors and Estates, is Necessary to Preserve Estate Assets and is an Exercise of the Credit Parties' Sound and Reasonable Business Judgment

43. A debtor's decision to enter into a post-petition lending facility under Bankruptcy Code section 364 is governed by the business judgment standard. *See Barbara K. Enters.*, 2008 WL 2439649, at *14 (explaining that courts defer to a debtor's business judgment); *Ames Dep't Stores*, 115 B.R. at 38 (noting that financing decisions under Bankruptcy Code section 364 must reflect a debtor's business judgment). Courts grant a debtor considerable deference in acting in accordance with its sound business judgment. *See, e.g.*, *Barbara K. Enters.*, 2008 WL 2439649, at *14 (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *Trans World Airlines, Inc. v. Travellers Int'l AG* (*In re Trans World Airlines, Inc.*), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving post-petition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) ("[D]iscretion to act with regard to business planning activities is at the heart of the debtor's power.") (citations omitted).

44. Specifically, to determine whether the business judgment standard is met, a court is "'required to examine whether a reasonable business person would make a similar decision under similar circumstances.'" *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC), 2007 Bankr. LEXIS 2764, at *272 (Bankr. D. Del, Aug. 15, 2007) (quoting *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006)); *In re Brooklyn Hosp. Ctr. and Caledonian Health Ctr., Inc.*, 341 B.R. 405, 410 (Bankr. E.D.N.Y. 2006) (the business judgment rule "'is a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good

faith, and in the honest belief that the action taken was in the best interests of the company'") *quoting Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),* 147 B.R. 650, 656 (S.D.N.Y. 1992); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code.") (citation omitted).

45. Furthermore, in determining whether the Credit Parties have exercised sound business judgment in deciding to enter into the DIP Documents, the Court should consider the economic terms of the DIP Financing in light of current market conditions. *See, e.g.*, Tr. of Rec., 734-35:24, *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Feb. 27, 2009) (recognizing "the terms that are now available for DIP financings in the current economic environment aren't as desirable" as in the past). Moreover, it is appropriate for the Court to consider non-economic benefits to the February Debtors and the Guarantor offered by a proposed post-petition financing facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

> Although all parties . . . are naturally motivated to obtain financing on the best possible terms, the business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic factors. . . . This is particularly true in a bankruptcy setting where cooperation and established alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable plan of reorganization. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

Case No. 09-13125 (Bankr. S.D.N.Y. July 6, 2009).

46. The Credit Parties' decision to enter into the proposed DIP Agreement is an exercise of their sound business judgment that warrants approval by the Court. As described in more detail above, the DIP Agreement represents the best financing available under the circumstances because it provides the February Debtors with the financing necessary to satisfy their expenses. The Credit Parties negotiated the DIP Documents with the DIP Lenders in good faith, at arm's length and with the assistance of outside advisors to obtain the required post-petition financing on the most favorable terms possible to the Credit Parties.

47. Based on the advice of the Credit Parties' counsel and their other advisors, and the Credit Parties' own analysis, the Credit Parties have determined in their sound business judgment that the DIP Financing provides financing on more favorable terms than any other reasonably available alternative.

48. Moreover, entry into the DIP Agreement and securing financing thereunder is absolutely necessary to the preservation of estate assets and is in the best interest of the February Debtors' creditors and all parties in interest; therefore, entry into the DIP Agreement is an exercise of the February Debtors' sound business judgment. Given the February Debtors' significantly constrained liquidity, the DIP Financing is of critical importance to preserving the value of the February Debtors' estates for the benefit of their stakeholders.

49. For these reasons, the Credit Parties submit that the terms of the DIP Financing were negotiated in good faith and that entry into the DIP Agreement is in the best interests of the February Debtors' creditors, is necessary to preserve the value of estate assets and is an exercise of the Credit Parties' sound and reasonable business judgment.

C. The DIP Financing is the Best Source of Funding Available to the February Debtors

50. It is well recognized in this jurisdiction and others that the appropriateness of a proposed post-petition financing facility must be considered in light of current market

conditions. *See, e.g.*, Tr. of Rec. at 734-35:24, *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Feb. 27, 2009); *Bray v. Shenandoah Fed. Savs. & Loan Assoc. (In re Snowshoe Co. Inc.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (noting that a debtor is not required to seek credit from every possible lender before determining such credit is unavailable). Indeed, courts often recognize that where there are few lenders likely able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [a debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd*, 99 B.R. 117 (N.D. Ga. 1989); *see also In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992) (the Bankruptcy Code "does not require the debtor to seek alternate financing from every possible lender"). This is especially true when time is of the essence. *See In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987). Rather, a debtor must demonstrate that it made a reasonable effort to seek credit from other sources available under sections 364(a) and (b). *See Snowshoe*, 789 F.2d at 1088; *see also In re Utah 7000, L.L.C.*, No. 08-21869, 2008 WL 2654919, at *2 (Bankr. D. Utah July 3, 2008); *Shaw Indus., Inc v. First Nat'l Bank of PA (In re Shaw Indus., Inc.)*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003) (where debtor made efforts by contacting "numerous" lenders and was unable to obtain credit without a priming lien, it had met its burden under Bankruptcy Code section 364(d)); *In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 899-900 (Bankr. N.D. Ohio 1992).

51. Though the current market for financing may be improving, it is still strained as the global economy recovers from the recent credit crisis. Simply put, because of current economic conditions, there is a limited market for financing, including debtor in possession financing or otherwise and provisions once considered "extraordinary" in debtor in possession

financing arrangements have, for the time being, become standard. *See, e.g.*, Tr. of Rec., *Lyondell*, at 740:4-6 & 752-53:22 ("[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of a DIP that included a roll-up of pre-petition secured debt] reasonable here and now."); Tr. of Rec. 123:17-25, 123:1, *Chemtura*, No. 09-11233 (S.D.N.Y. Mar. 20, 2009) (J. Gonzalez noting support for finding that DIP with roll-up provision was the only funding available to meet the debtors' needs at that time).

52. Moreover, as is the case in many restructurings, those parties in the capital structure often have the most incentive to provide DIP financing on the best terms and third parties, in recognition such as this, often shy away from strategy to compete. This phenomenon also described the TSC Debtors' situation.

53. For these reasons, the Credit Parties believe that the terms that they have negotiated in the DIP Financing are favorable, fair and appropriate. Accordingly, the Credit Parties submit that the terms of the DIP Agreement provide financing on more favorable terms than any other reasonably available alternative.

D. The Terms of the DIP Financing Are Fair, Reasonable and Appropriate in Light of the February Debtors' Needs and the Current Market Environment

54. In considering whether the terms of post-petition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland*, 294 B.R. at 886; *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co.* (*In re Elingsen MacLean Oil Co., Inc.*), 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into hard bargains to acquire funds for its reorganization).

(i) The Scope of the Carve-Out Is Appropriate

55. The proposed DIP Financing subjects the security interests and administrative expense claims of the DIP Lenders to the Carve-Out. Such carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel. *See, e.g., In re Barbara K. Enters., Inc.*, 2008 WL 2439649, at *8 *citing Ames*, 115 B.R. at 37 (pointing out reservations to DIP financing proposal with no carve-out for professional fees). The DIP Financing does not directly or indirectly deprive the February Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. *See Ames*, 115 B.R. at 38 (observing that courts insist on carve-outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of the case by ensuring that adequate assets remain for the payment of U.S. Trustee fees, Chapter 7 Trustee Fees (to the extent applicable) and professional fees notwithstanding the grant of superpriority and administrative liens and claims under the DIP Financing.

(ii) The Payment of Fees to the DIP Lenders Is Appropriate

56. The various fees and charges to be paid to the DIP Lenders as described in the overview of the proposed DIP Financing and provided for in the DIP Documents, are reasonable and appropriate under the circumstances. Courts routinely authorize similar lender incentives beyond the explicit liens and rights specified in Bankruptcy Code section 364. *See Resolution Trust Corp. v. Official Unsecured Creditors Comm. (In re Defender Drug Stores, Inc.*), 145 B.R. 312, 319 (B.A.P. 9th Cir. 1992) (approving financing facility pursuant to Bankruptcy Code section 364 that included a lender "enhancement fee"). More specifically, the February Debtors

believe that the proposed interest rate is fair, reasonable and appropriate in light of the circumstances of these cases.

E. The Use of Cash Collateral is Appropriate

57. Pursuant to Bankruptcy Code section 363(c), the February Debtors may only use cash collateral subject to the consent of those parties or the grant of adequate protection. The February Debtors do not believe that any Prior Liens are in existence as of the February Petition Date and, as detailed below, the Bridge Loan Lenders have been adequately protected.[12]

58. What constitutes adequate protection is decided on a case by case basis and adequate protection can come in various forms, including payment of adequate protection fees, payment of interest, granting of replacement liens and administrative claims. *See In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a fact specific inquiry . . . 'left to the vagaries of each case'") (citation omitted); *In re Realty Sw. Assocs.*, 140 B.R. 360, 366 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (citation omitted); *Suntrust Bank v. Den-Mark Constr., Inc.*, 406 B.R. 683, 694 (E.D.N.C. 2009) (the concept of adequate protection is "susceptible to differing applications over a wide range of factual situations"). The Bridge Loan Lenders are adequately protected as the value of the February Debtors' assets greatly exceeds the amount of secured debt encumbering such assets.

59. As further adequate protection, and to compensate the Bridge Loan Lenders for any diminution in value of their pre-petition collateral, the February Debtors propose to provide

[12] In addition, the majority of the Bridge Loan Lenders have consented to the use of Cash Collateral.

the Bridge Loan Lenders with the following (collectively, the "***Adequate Protection Obligations***"):

(a) *Adequate Protection Lien*. As security for the payment of the Adequate Protection Obligations, the Bridge Loan Lenders are hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the February Debtors or the Guarantor of security agreements, pledge agreements, mortgages, financing statements or other agreements) a valid, perfected replacement security interest in and lien on the DIP Collateral (the "***Adequate Protection Lien***"), subject and subordinate only to (A) the Prior Liens, (B) the DIP Liens and (C) the Carve-Out, and senior to all other liens.

(b) *Interest.* As further adequate protection, and without limiting any rights of the Bridge Loan Agent and the Bridge Loan Lenders under Bankruptcy Code section 506(b) which are hereby preserved, and in consideration, and as a requirement, for the use of Cash Collateral, and the priming of their liens, as provided herein, while interest shall continue to accrue under the Bridge Loan Agreement at the default rate, the February Debtors shall, on the last day of each calendar month commencing after the closing of the DIP Financing, pay to the Bridge Loan Agent for prompt distribution to the Bridge Loan Lenders only the interest accruing at the non-default rate under the Bridge Loan Agreement.

(c) *Section 507(b) Claims*. The Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "***507(b) Claims***"), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 326, 328, 330, 331, 503(b), 506(c), 507(a), 726, 1113 and 1114 of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out and (ii) the Superpriority Claims granted in respect of the DIP Obligations. Except to the extent expressly set forth in this Order, the Bridge Loan Lenders shall not receive or retain any payments, property or other amounts in respect of the 507(b) Claims unless and until all DIP Obligations shall have indefeasibly been paid in full in cash and the DIP Financing commitments have been terminated.

60. The Credit Parties believe that the proposed adequate protection is necessary and appropriate to ensure that the TSC Debtors can continue to use the cash collateral and access liquidity under the DIP Financing. Accordingly, the adequate protection proposed herein is fair and reasonable and is sufficient to satisfy the requirements of Bankruptcy Code sections 363(c) and 364(d).

VIII. THE DIP FINANCING WAS NEGOTIATED IN GOOD FAITH AND SHOULD BE AFFORDED THE PROTECTION OF BANKRUPTCY CODE SECTION 364(E)

61. Bankruptcy Code section 364(e) protects a good faith lender's right to collect on loans extended to a debtor and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Specifically, Bankruptcy Code section 364(e) provides that any "reversal or modification on appeal of an authorization to obtain credit or incur debt or a grant of priority or a lien under Bankruptcy Code section 364 shall not affect the validity of that debt incurred or priority or lien granted as long as the entity that extended credit "extended such credit in good faith." 11 U.S.C. § 364(e).

62. Courts generally hold that "good faith" in the context of post-petition financing means, consistent with the Uniform Commercial Code, honesty in fact in the conduct or transaction concerned. *See Unsecured Creditors' Comm. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 834 F.2d 599, 605 (6th Cir. 1987) (citing U.C.C. § 1-201(19)). Additionally, good faith is measured with respect to the good faith of the lender as contrasted to that of the borrower. Tr. of Rec. at 736:24-25, *In re Lyondell Chem. Co.*, No. 09-10023 (Bankr. S.D.N.Y. Feb. 27, 2009). Moreover, a lender's desire to ensure that it is repaid, to make money on interest and fees and to protect pre-petition positions are understandable and acceptable motivations for a post-petition lender in negotiating a deal. *Id*. at 737:10-14.

63. As explained in detail herein, the terms of the DIP Financing were negotiated in good faith and at arm's length between the February Debtors, the Guarantor, the DIP Agent and the DIP Lenders and the DIP Financing will be extended by the DIP Lenders in good faith (as such term is used in Bankruptcy Code section 364(e)). No consideration is being provided to any party to, or guarantor of, obligations arising under the DIP Financing, other than as set forth

herein. Moreover, the DIP Financing has been extended in express reliance upon the protections offered by Bankruptcy Code section 364(e), and the DIP Lenders should be entitled to the full protection of Bankruptcy Code section 364(e) in the event that the Order or any provision thereof is vacated, reversed or modified on appeal or otherwise.

IX. MODIFICATION OF THE AUTOMATIC STAY PROVIDED UNDER BANKRUPTCY CODE SECTION 362 IS APPROPRIATE UNDER THE CIRCUMSTANCES

64. The proposed Order provides that the automatic stay imposed under Bankruptcy Code section 362(a) is hereby lifted to implement and effectuate the terms and provisions of the DIP Documents and the Order. Among other things, the automatic stay is vacated and lifted: (i) to permit the Credit Parties to grant various superpriority liens and claims, perform various obligations, incur various liabilities; (ii) to permit the exercise of remedies by the DIP Agent following a default under the DIP Financing; and (iii) to allow the DIP Agent and to file and record financing statements, mortgages or other instruments to provide notice and evidence the grant and perfection of the liens.

65. Stay modification provisions of this sort are ordinary and usual features of debtor in possession financing facilities and, in the February Debtors' business judgment, are reasonable under the present circumstances. *See, e.g., In re Innkeepers USA Trust*, Case No. 10-13800, at 14 (Bankr. S.D.N.Y. Sept. 2, 2010); *Tronox Inc.*, Case No. 09-10156, at 33, 41-43 (Bankr. S.D.N.Y. Jan. 15, 2010); *In re Gen. Growth Props. Inc.*, Case No. 09-1197, at 27, 30 (Bankr. S.D.N.Y. May 14, 2009); *In re Chemtura Corp.*, Case No. 09-11233, at 16-17 (Bankr. S.D.N.Y. Apr. 29, 2009). Accordingly, the Court should modify the automatic stay to the extent contemplated under the DIP Agreement and the proposed Order.

X. REQUEST FOR WAIVER OF STAY

66. The February Debtors and the Guarantor further seek a waiver of any stay of the effectiveness of the order approving this DIP Motion. Pursuant to Bankruptcy Rule 6004(h), "a[n] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise." As set forth above, the DIP Financing is essential to prevent irreparable damage to the February Debtors' business, value and ability to reorganize. Accordingly, the February Debtors and the Guarantor submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

XI. MOTION PRACTICE

67. The DIP Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this motion. Accordingly, the TSC Debtors submit that the DIP Motion satisfies Local Rule 9013-1.

XII. NOTICE

68. Notice of this DIP Motion and the relief requested herein was served by the Credit Parties by electronic mail, facsimile, or overnight mail to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) the Bridge Loan Agent; (d) the proposed DIP Agent; (e) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners LLC and certain of its managed and affiliated funds; (f) Wachtell, Lipton, Rosen & Katz, as counsel to the proposed DIP Agent; (g) Richards Kibbe & Orbe LLP as counsel to West Face Long Term Opportunities Global Master L.P.; (h) the Internal Revenue Service; (i) the Securities and Exchange Commission; (j) the United States Attorney for the Southern District of New York; (k) the Federal Communications Commission

and (l) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Credit Parties respectfully submit that no further notice is necessary.

XIII. NO PRIOR REQUEST

69. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE the Credit Parties respectfully request entry of orders, substantially similar to the proposed form of order attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

New York, New York
Dated: June 27, 2012

/s/ Ira S. Dizengoff
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Counsel to the TSC Debtors

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR CORPORATION, *et al.*,[1]	)	Case No. 11-10612 (SHL)
Debtors.	)	Jointly Administered

ORDER (A) AUTHORIZING THE FEBRUARY DEBTORS TO OBTAIN POSTPETITION FINANCING AND (B) AUTHORIZING THE FEBRUARY DEBTORS TO USE CASH COLLATERAL

Upon the motion, dated June 27, 2012 (the "***Motion***"),[2] of TerreStar Corporation ("***TSC***"), TerreStar Holdings Inc. ("***TS Holdings***") and Motient Ventures Holding Inc. (the "***Guarantor***") in the above-captioned cases (the "***TSC Cases***") for a final order under sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the "***Bankruptcy Code***"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "***Bankruptcy Rules***") and the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "***Local Rules***"), seeking entry of an order:

(I) authorizing (a) the February Debtors to obtain up to $3,000,000.00 (minus any commitment fee plus other amounts to be capitalized, each in accordance with the terms of the DIP Documents (as defined below)) in aggregate principal amount of postpetition financing (the "***DIP Financing***") and loans thereunder (the "***DIP Loans***") pursuant to an agreement, a copy of

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal taxpayer-identification number, are: (a) TerreStar Corporation [6127]; and TerreStar Holdings Inc. [0778] (collectively, the "***February Debtors***") and (b) TerreStar New York Inc. [6394]; Motient Communications Inc. [3833]; Motient Holdings Inc. [6634]; Motient License Inc. [2431]; Motient Services Inc. [5106]; Motient Ventures Holding Inc. [6191]; MVH Holdings Inc. [9756] (collectively, the "***Other TSC Debtors***" and. collectively with the February Debtors, the "***TSC Debtors***").

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Agreement or the Motion, as applicable.

which is annexed hereto as Exhibit A (as hereafter amended, restated, supplemented or otherwise modified from time to time, the "***DIP Agreement***") and, collectively with all agreements, guaranties, collateral agreements, documents and instruments delivered or executed from time to time in connection therewith, as hereafter amended, supplemented or otherwise modified from time to time, the "***DIP Documents***") among the February Debtors, the Guarantor, Solus Alternative Asset Management LP, Highland Capital Management, LP, West Face Long Term Opportunities Global Master L.P., Och-Ziff Capital Management Group, and their respective Affiliates and Approved Funds (each as defined in the DIP Agreement) (the "***DIP Lenders***") and [NexBank, SSB] as Administrative Agent and Collateral Agent (in such capacity, the "***DIP Agent***"), on the terms and conditions set forth in this order (this "***Order***") and (b) for the Guarantor to guaranty on a secured basis the February Debtors' obligations in respect of the DIP Financing;

(II) authorizing the February Debtors and the Guarantor to execute and deliver the DIP Agreement and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith, including, without limitation granting (x) to the DIP Agent for the benefit of itself and the DIP Lenders, liens on all of the DIP Collateral (as defined in paragraph 7 below) pursuant to sections 364(c)(2), (c)(3) and 364(d) of the Bankruptcy Code, which liens shall be (i) senior to all liens other than the Prior Liens (as defined below), but only to the extent such liens secure valid and enforceable prepetition secured obligations, and (ii) subject to the Carve-Out (as defined below) and (y) to the DIP Lenders pursuant to section 364(c)(1) of the Bankruptcy Code superpriority administrative claims having recourse to all prepetition and postpetition property of the February Debtors' and the Guarantor's estates, now owned or hereafter acquired;

(III) authorizing the February Debtors to use their cash collateral (as defined in section 363(a) of the Bankruptcy Code, "***Cash Collateral***" and all prepetition collateral of any kind (including the Cash Collateral held by the February Debtors and the Bridge Loan Collateral (as defined below)), the "***Prepetition Collateral***") pursuant to sections 361, 362 and 363 of the Bankruptcy Code and subject to non-avoidable, valid, enforceable and perfected liens that are senior in priority to the Bridge Loan Liens (as defined below) (such liens being the "***Prior Liens***") in existence on the February Petition Date;

(IV) granting adequate protection to the Bridge Loan Lenders with respect to the Bridge Loan Collateral;

(V) authorizing the DIP Agent to, upon the occurrence and continuance of an Event of Default, among other things: (a) reduce the amount of or terminate any outstanding commitments under the DIP Agreement, (b) terminate the DIP Agreement, (c) charge the default rate of interest on the DIP Loans, (d) declare the entirety of the DIP Loans to be due and payable, (e) terminate the use of Cash Collateral and/or (f) subject to the Carve-Out (as defined below), exercise any and all remedies under applicable law;

(VI) authorizing the Bridge Loan Agent (as defined below) to, upon the occurrence and continuance of a Termination Event (as defined below) and after notice of not less than five (5) business days and a hearing, terminate the use of Cash Collateral held by the February Debtors; and

(VII) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Order; and

The hearing on the Motion (the "***Hearing***") having been held by this Court, and upon the record made by the February Debtors and the Guarantor at the Hearing, including, without limitation, the admission into evidence of the First Day Affidavit and the Zelin Declaration (each as defined in the Motion), and the other evidence submitted or adduced and the arguments of counsel made at the Hearing, and after due deliberation and consideration, and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction/Venue*. This Court has core jurisdiction over the TSC Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice*. Based upon the February Debtors' and the Guarantor's representations, notice of the Motion and the relief requested therein, and the relief requested at the Hearing was served by the February Debtors and the Guarantor by electronic mail, facsimile, or overnight mail to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) the Bridge Loan Agent (as defined below); (d) the DIP Agent; (e) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners LLC and certain of its managed and affiliated funds; (f) Wachtell, Lipton, Rosen & Katz, as counsel to the proposed DIP Agent; (g) Richards Kibbe & Orbe LLP as counsel to West Face Long Term Opportunities Global Master L.P.; (h) the Internal Revenue Service; (i) the Securities and Exchange Commission; (j) the United States Attorney for the Southern District of New York; (k) the Federal Communications Commission; and (l) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002. Under the circumstances, the

notice provided of the Motion, the relief requested therein and the Hearing constitutes due and sufficient notice thereof, complies with Bankruptcy Rules 4001(c) and (d) and the Local Rules, and no further notice of the relief sought at the Hearing and the relief granted herein is necessary or required.

3. *February Debtors' Stipulations*. The February Debtors admit, stipulate, acknowledge and agree that:

(a) *Prepetition Financing Agreements*. Prior to the commencement of the TSC Cases, the lenders (the "***Bridge Loan Lenders***") under that certain Term Loan Credit Agreement, dated as of November 19, 2010 (as amended from time to time, the "***Bridge Loan Agreement***" and together with all other documents executed in connection thereto, the "***Bridge Loan Documents***") made loans, made advances and provided other financial accommodations to the February Debtors pursuant to the terms and conditions set forth in (i) the Bridge Loan Agreement and (ii) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of NexBank, SSB, as agent (the "***Bridge Loan Agent***"), and the Bridge Loan Lenders, including, without limitation, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements and all other related agreements, documents and instruments executed and/or delivered in connection therewith or related thereto.

(b) *Bridge Loan Obligations Amount*. As of the February Petition Date, the aggregate principal amount of all loans to TSC and TS Holdings under and in connection with the Bridge Loan Documents was not less than $[4,308,262.98], plus interest accrued and accruing thereon, together with all costs, fees, expenses (including attorneys' fees and legal expenses) and other charges accrued, accruing or chargeable with respect thereto (collectively, the "***Bridge Loan Obligations***"). The Bridge Loan Obligations constitute allowed, legal, valid,

binding, enforceable and non-avoidable obligations of the February Debtors, and are not subject to any offset, defense, counterclaim, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or any other applicable law, and the February Debtors do not possess and shall not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the allowance, validity, binding nature, enforceability or non-avoidability of any of the Bridge Loan Obligations.

(c) *Bridge Loan Liens and Bridge Loan Collateral.* As of the February Petition Date, the Bridge Loan Obligations were fully secured pursuant to the Bridge Loan Documents by liens (the "***Bridge Loan Liens***"). The Bridge Loan Liens are valid, binding, perfected, enforceable and non-avoidable first priority security interests and liens granted by the February Debtors to the Bridge Loan Agent for the ratable benefit of the Bridge Loan Lenders upon substantially all of the assets of the February Debtors (the "***Bridge Loan Collateral***"), subject only to the liens permitted under Section 7.2 of the Bridge Loan Agreement, to the extent that such security interests, liens or encumbrances are (a) valid, perfected and non-avoidable security interests, liens or encumbrances existing as of the February Petition Date, and (b) senior to and have not been and are not subject to being subordinated to the Bridge Loan Agent's liens on and security interests in the Bridge Loan Collateral or otherwise avoided, and, in each instance, only for so long as and to the extent that such encumbrances are and remain senior and outstanding. The February Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the allowance, validity, enforceability, binding nature, perfection, priority or non-avoidability of any of the Bridge Loan Agent's liens, claims or security interests in the Bridge Loan Collateral.

(d) *Release of Claims*. Subject to the reservation of rights set forth in paragraph 7(e) below, each of the February Debtors and its estate shall be deemed to have forever waived, discharged and released the Bridge Loan Lenders, together with their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors and employees (all of the foregoing, collectively, the "***Bridge Loan Lender Releasees***") of any and all "claims" (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff, recoupment or other offset rights against any and all of the Bridge Loan Lender Releasees, whether arising at law or in equity, with respect to the Bridge Loan Obligations and the Bridge Loan Liens, including, without limitation, (I) any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code, or under any other similar provisions of applicable state or federal law, and (II) any right or basis to challenge or object to the amount, allowance, validity, binding nature, enforceability or non-avoidability of the Bridge Loan Obligations, or the validity, binding nature, enforceability, perfection, priority or non-avoidability of the Bridge Loan Liens securing the Bridge Loan Obligations.

4. *Findings Regarding the DIP Financing*. The Court is satisfied based upon the February Debtors' and the Guarantor's representations that:

(a) The February Debtors have a need to obtain the DIP Financing and to use the Prepetition Collateral and Cash Collateral in order to, among other things, permit the orderly continuation of their businesses, preserve the going concern value of the February Debtors, pay the costs of administration of their estates and for the other purposes set forth in the DIP Documents. The February Debtors' use of the Prepetition Collateral and the Cash Collateral and the DIP Financing is necessary to ensure that the February Debtors have sufficient working

capital and liquidity to preserve and maintain the going concern value of the February Debtors' estates. Good cause has, therefore, been shown for entry of this Order.

(b) The February Debtors are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The February Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the February Debtors granting to the DIP Agent for the ratable benefit of the DIP Lenders, subject to the Carve-Out, (i) the DIP Liens (as defined in paragraph 7 below) and (ii) the Superpriority Claims (as defined in paragraph 6(a) below), in each case on the terms and conditions set forth in this Order and the DIP Documents.

(c) The terms of the DIP Documents and the use of the Prepetition Collateral and the Cash Collateral pursuant to this Order and the DIP Agreement reflect the February Debtors' and the Guarantor's exercise of prudent business judgment consistent with their fiduciary duties and are fair and reasonable and the best available under the circumstances. The February Debtors and the Guarantor will receive and have received reasonably equivalent value for and fair and reasonable consideration in exchange for access to the DIP Financing and all other financial accommodations provided under the DIP Documents and this Order.

(d) The DIP Documents and the terms and conditions of the February Debtors' use of the Bridge Loan Collateral and Cash Collateral have been the subject of negotiations conducted in good faith and at arm's length among the February Debtors, the Guarantor, the DIP Agent and the DIP Lenders, and all of the February Debtors' and the Guarantor's obligations and indebtedness arising under or in connection with the DIP Financing, including without limitation, (i) all loans made to, and guaranties issued by, the February Debtors and the Guarantor pursuant to the DIP Agreement, (ii) the February Debtors' and the Guarantor's obligation to reimburse the

DIP Agent for all expenses and (iii) all other obligations (including, without limitation, indemnification and fee obligations) of the February Debtors and the Guarantor under the DIP Documents and this Order now or hereafter owing to the DIP Agent or the DIP Lenders (collectively, (i), (ii) and (iii), the "***DIP Obligations***") shall be deemed to have been extended by the DIP Agent and the DIP Lenders in "good faith" as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code, in the event that this Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

5. Authorization of the DIP Financing and the DIP Documents.

(a) The February Debtors are hereby expressly and immediately authorized, without stockholder, member or board of directors (or similar body) approval, to enter into and perform their obligations under the DIP Documents and to borrow thereunder up to an aggregate principal amount of $3,000,000.00 (minus any commitment fee plus other amounts to be capitalized, each in accordance with the terms of the DIP Documents) to (i) pay fees and expenses associated with the DIP Financing, (ii) to make one or more intercompany loans to certain Co-Debtors, TerreStar Global Ltd. and TerreStar 1.4 Holdings LLC in an aggregate amount not to exceed $[60,000] or, with the consent of the Requisite Lenders (as defined in the DIP Agreement), a greater amount (iii) in accordance with the Budget, provide for the February Debtors' ongoing working capital requirements and (iv) make payments and settlements of prepetition claims, subject to the reasonable consent of the Requisite Lenders.

(b) The Guarantor is hereby expressly and immediately authorized, without stockholder, member or board of directors (or similar body) approval, to enter into and perform

its obligations under the DIP Documents and to guaranty the February Debtors' obligations under the DIP Agreement.

(c) The February Debtors are authorized to use the proceeds of borrowings under the DIP Agreement and Prepetition Collateral and Cash Collateral in accordance with and to the extent permitted by the DIP Documents and the Budget.

(d) The February Debtors and the Guarantor are hereby authorized, and upon execution of the DIP Agreement, directed to do and perform all acts and pay the principal, interest, fees, expenses and other amounts described in the DIP Documents as such become due pursuant to the DIP Documents and this Order, including, without limitation, all closing fees, administrative fees, commitment fees, and reasonable DIP Agent attorneys' and accountants' fees and disbursements arising under the DIP Documents and this Order, which amounts shall not be subject to further approval of this Court and shall be nonrefundable; provided, however, that the payment of the fees and expenses of the DIP Agent Professionals (as defined below) shall be subject to the provisions of paragraph 17.

(e) In furtherance of the foregoing and without further approval of this Court, each of the February Debtors and the Guarantor is authorized, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby lifted to the extent necessary, to perform all acts and to execute and deliver all instruments and documents that the DIP Agent or any DIP Lender determines to be reasonably required or necessary for the February Debtors' and the Guarantor's performance of their obligations under the DIP Documents, including without limitation:

(i) the execution, delivery and performance of the DIP Documents;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each

case in such form as the February Debtors, the Guarantor, the DIP Agent and the Requisite Lenders may agree, and no further approval of this Court shall be required for immaterial amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees paid in connection therewith) unless such amendments, waivers, consents or other modifications (A) shorten the maturity of the DIP Loans or (B) increase the commitments or the rate of interest payable on the DIP Loans under the DIP Agreement; provided, that a copy of any amendment, waiver, consent or other modification to the DIP Documents shall be provided by the February Debtors and the Guarantor to the U.S. Trustee;

(iii) the non-refundable payment to the DIP Agent, its affiliates and the DIP Lenders, as the case may be, of (A) the fees set forth in the DIP Documents and (B) such reasonable, actual, and documented costs and expenses of the DIP Agent as may be due from time to time under the DIP Documents, all as provided in the DIP Documents and all of which constitute DIP Obligations; and

(iv) the performance of all other acts required under or in connection with the DIP Documents.

(f) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the February Debtors and the Guarantor, enforceable against the February Debtors and the Guarantor in accordance with the terms of this Order and the DIP Documents, without the need for approval by any equity holder, member, or board of directors (or similar governing body) of any TSC Debtor. Each officer of a TSC Debtor acting singly is hereby authorized to execute and deliver each of the DIP Documents, such execution and delivery to be conclusive of their respective authority to act in the name of and on behalf of the February Debtors and the Guarantor. No obligation, payment, transfer or grant of

security under the DIP Documents or this Order shall be stayed, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law (including without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

(g) The February Debtors have provided the DIP Lenders with the 6-month cash flow projection, a copy of which is annexed hereto as Exhibit B (as defined in the DIP Agreement, the "***Budget***").

(h) No DIP Lender shall have any obligation to make any DIP Loan unless and until all conditions precedent to the making of any such DIP Loan or under the DIP Documents and this Order have been satisfied in full or waived by each DIP Lender in accordance with the DIP Documents and this Order.

6. *Superpriority Claims*.

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims (the "***Superpriority Claims***") against the February Debtors and the Guarantor and, except to the extent expressly set forth in this Order in respect of the Carve-Out, such Superpriority Claims shall have priority over any and all administrative expenses, and adequate protection claims against the February Debtors or the Guarantor, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, which allowed claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the

Bankruptcy Code, and which Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the February Debtors and the Guarantor and all proceeds thereof.

(b) (X) For purposes hereof, the "***Carve-Out***" shall mean: (i) all fees required to be paid by any of the February Debtors and the Guarantor to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code; (ii) fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) all allowed reasonable and documented professional fees and expenses incurred by the February Debtors or a statutory committee (if any) prior to an Event of Default that are payable under sections 330 and 331 of the Bankruptcy Code, subject to entry of a customary order of the Bankruptcy Court; and (iv) the payment of all allowed reasonable and documented professional fees and expenses incurred by the February Debtors or a statutory committee after the occurrence of the Event of Default that are payable under sections 330 and 331 of the Bankruptcy Code in an aggregate amount not in excess of $400,000 (plus all unpaid professional fees and expenses allowed by this Court that were incurred prior to the occurrence of such Event of Default); (Y) so long as no Event of Default shall have occurred and be continuing, the February Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 328, 330 and 331 of the Bankruptcy Code, as the same may be due and payable, in accordance with the Budget, and the same shall not reduce the Carve-Out; and (Z) nothing in this Order shall impair the right of any party to object to the reasonableness of any such fees or expenses to be paid by the February Debtors' estates.

7. *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of this Order and without the necessity of the execution by the February Debtors or the

Guarantor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Agent of any property, the following security interests and liens are hereby granted to the DIP Agent, for the ratable benefit of the DIP Lenders (all property identified in clauses (a), (b), (c) and (d) below being collectively referred to as the "***DIP Collateral***"), subject only to the Carve-Out (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Order and the DIP Documents, the "***DIP Liens***"):

(a) *First Lien on DIP Collateral*. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, all tangible and intangible prepetition and postpetition property in which the February Debtors or the Guarantor have an interest, whether existing on or as of the February Petition Date or thereafter acquired, that is not subject to valid, perfected, non-avoidable and enforceable liens in existence on or as of the February Petition Date, including without limitation, any and all unencumbered cash (wherever located), accounts, accounts receivable, other rights to payment, inventory, general intangibles, contracts, contract rights, securities, chattel paper, owned real estate, real property leaseholds, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, instruments, investment property, goods, satellites, spare satellites, ground stations, commercial tort claims, proceeds from causes of action arising under chapter 5 of the Bankruptcy Code (including causes of action for preferences, fraudulent transfers and other avoidance power claims and any recoveries under sections 506(c), 542, 544, 545, 547, 548, 549, 550, 552(b) and 553 of the Bankruptcy Code) proceeds from the disposition of Federal

Communications Commission licenses (and the Federal Communications Commission licenses themselves, to the fullest extent permitted by applicable law), books and records and all other assets and properties of the February Debtors or the Guarantor, in each case, wherever located, and the proceeds, products, rents and profits of all of the foregoing, subject only to: (a) the Carve-Out and (b) the Prior Liens.

(b) *Priming Liens*. Pursuant to Bankruptcy Code section 364(d)(1) and based upon a showing that the interests of the Bridge Loan Lenders are adequately protected, a valid binding, continuing, enforceable, fully perfected, non-avoidable first priority priming lien on and security interest in the Bridge Loan Collateral, which lien shall be senior in all respects to the Bridge Loan Liens, subject only to (i) the Carve-Out and (ii) the Prior Liens.

(c) *Liens Junior to Certain Existing Liens*. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected lien on, and security interest in, all tangible and intangible prepetition and postpetition property in which the February Debtors or the Guarantor have an interest, whether now existing or hereafter acquired and all proceeds thereof, that is subject to the Prior Liens, which security interest and lien shall be junior only to (i) the Prior Liens, (but only to the extent such liens are properly perfected and secure valid and enforceable prepetition obligations), and (ii) the Carve-Out, but senior to all other liens.

(d) *Liens Senior to Certain Other Liens*. The DIP Liens and the Adequate Protection Lien (as defined in paragraph 13(a) below) shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the February Debtors or the Guarantor and their estates under section 551 of the Bankruptcy Code or (B) any liens arising after the February Petition Date, including without limitation, any liens or security

interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the February Debtors or the Guarantor or (ii) subordinated to or made *pari passu* with any other lien or security interest (other than the Prior Liens and the Carve-Out) under sections 363 or 364 of the Bankruptcy Code or otherwise.

(e) *Reservation of Rights*. Notwithstanding anything herein to the contrary, except with respect to the obligations and liens in respect of the Bridge Loan Agreement and the DIP Agreement, the TSC Debtors, the Bridge Loan Agent, the Bridge Loan Lenders, the DIP Agent and the DIP Lenders reserve all rights with respect to the validity, perfection and enforceability, as applicable, of any liens asserted in respect of the February Debtors' assets, and any obligations asserted against the February Debtors.

8. *Remedies After Event of Default.* The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, (i) immediately upon the occurrence and during the continuance of an Event of Default, all rights and remedies under the DIP Documents, other than those rights and remedies against the DIP Collateral as provided in clause (ii) below, and (ii) upon the occurrence and during the continuance of an Event of Default, and the giving of five (5) business days' prior written notice to the February Debtors and the Guarantor, with a copy to counsel for the February Debtors and the Guarantor, and to the U.S. Trustee, all rights and remedies against the DIP Collateral provided for in the DIP Documents and this Order. The DIP Agent's or any DIP Lender's delay or failure to exercise rights and remedies under the DIP Documents or this Order shall not constitute a waiver of the DIP Agent's or any DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable DIP Documents.

9. *Limitation on Charging Expenses Against Collateral*. Except to the extent of the Carve-Out with respect to the DIP Collateral or the Bridge Loan Collateral, no expenses of administration of the TSC Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral or the Bridge Loan Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law or in equity, without the prior written consent of the DIP Agent and the Bridge Loan Agent, and no such consent shall be implied from any other action or inaction by the DIP Agent, any DIP Lender, the Bridge Loan Agent or any Bridge Loan Lender.

10. *Payments Free and Clear*. Any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Lenders pursuant to the provisions of this Order or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment or other liability.

11. *Use of Prepetition Collateral*. The February Debtors are hereby authorized to use the Prepetition Collateral during the period from the date hereof through and including the termination of the DIP Agreement in accordance with the terms and conditions of this Order, the DIP Documents and the Budget.

12. *Use of Cash Collateral*. Subject to the terms and conditions set forth in this Order, the Budget and the DIP Agreement, the February Debtors are authorized, pursuant to section 363(c)(2)(B) of the Bankruptcy Code, to use the Bridge Loan Lenders' and the DIP Lenders' Cash Collateral for the period of time from the date hereof until the occurrence of a "Termination Event," which, prior to the repayment in full in cash of the Bridge Loan Obligations, shall mean the earliest to occur of (i) the maturity of the DIP Agreement, (ii) the

determination by the DIP Agent and DIP Lenders to terminate or accelerate the DIP Loans under the DIP Agreement following the occurrence of an Event of Default, (iii) the date on which this Order ceases to be in full force and effect, (iv) the date on which any Cash Collateral is expended other than in accordance with the provisions of this Order, the Budget or the DIP Agreement, (v) the date on which the February Debtors seek or receive authorization from this Court to borrow more than the principal amount of $3,000,000.00 (inclusive of borrowings authorized under this Order) under the DIP Documents or any other financing arrangements prior to, on or after entry of this Order without being authorized, directed and required, as a condition to such additional borrowings, to immediately and indefeasibly repay and satisfy in full, in cash all of the DIP Loans and the Bridge Loan from the proceeds of such additional borrowings, (vi) the date on which any of the TSC Cases are converted to a case under chapter 7 of the Bankruptcy Code, or (vii) the date on which a trustee or examiner with expanded powers is appointed in any of the TSC Cases.

13. *Adequate Protection*. The Bridge Loan Lenders and the holders of Prior Liens are adequately protected as the value of the February Debtors' assets greatly exceeds the amount of secured debt encumbering such assets. Further, the Bridge Loan Lenders are entitled, pursuant to sections 105, 361, 363 and 364 of the Bankruptcy Code, to adequate protection of their interests in the Bridge Loan Collateral, including Cash Collateral, in an amount equal to the aggregate diminution in value of the Bridge Loan Lenders' security interests in the Bridge Loan Collateral, including without limitation, any such diminution resulting from the sale, lease or use by the February Debtors (or other decline in value) of any Bridge Loan Collateral, including the Cash Collateral, the priming of the Bridge Loan Liens and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (such diminution in value, the "***Adequate***

Protection Obligations"). As adequate protection, the Bridge Loan Lenders are hereby granted the following (the "***Adequate Protection***"):

(a) *Adequate Protection Lien*. As security for the payment of the Adequate Protection Obligations, the Bridge Loan Lenders are hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the February Debtors or the Guarantor of security agreements, pledge agreements, mortgages, financing statements or other agreements) a valid, perfected replacement security interest in and lien on the DIP Collateral (the "***Adequate Protection Lien***"), subject and subordinate only to (A) the Prior Liens, (B) the DIP Liens and (C) the Carve-Out, and senior to all other liens.

(b) *Interest*. As further adequate protection, and without limiting any rights of the Bridge Loan Agent and the Bridge Loan Lenders under section 506(b) of the Bankruptcy Code which are hereby preserved, and in consideration, and as a requirement, for the use of Cash Collateral, and the priming of their liens, as provided herein, while interest shall continue to accrue under the Bridge Loan Agreement at the default rate, the February Debtors shall, on the last day of each calendar month commencing after the closing of the DIP Financing, pay to the Bridge Loan Agent for prompt distribution to the Bridge Loan Lenders only the interest accruing at the non-default rate under the Bridge Loan Agreement.

(c) *Section 507(b) Claims*. The Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "***507(b) Claims***"), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 326, 328, 330, 331, 503(b), 506(c), 507(a), 726, 1113 and 1114 of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out and (ii) the Superpriority

Claims granted in respect of the DIP Obligations. Except to the extent expressly set forth in this Order, the Bridge Loan Lenders shall not receive or retain any payments, property or other amounts in respect of the 507(b) Claims unless and until all DIP Obligations shall have indefeasibly been paid in full in cash and the DIP Financing commitments have been terminated.

(d) *Right to Credit Bid*. The Bridge Loan Agent (on behalf of the Bridge Loan Lenders) and the DIP Agent (on behalf of the DIP Lenders) shall have the right to "credit bid" the allowed amount of the obligations under the Bridge Loan and/or the DIP Financing, as applicable, during any sale or any of the TSC Debtors' assets pledged as Bridge Loan Collateral or DIP Collateral, as applicable, including without limitation, in connection with sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any plan subject to confirmation under section 1129(b)(2)(A) of the Bankruptcy Code.

(e) [Reserved.]

14. *Reservation of Rights to Challenge Adequate Protection*. Under the circumstances and given that the adequate protection granted pursuant to this Order is consistent with the Bankruptcy Code, this Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of holders of Prior Liens and the Bridge Loan Lenders. Notwithstanding any other provision hereof, the grant of adequate protection is without prejudice to the right of the holders of Prior Liens or the Bridge Loan Lenders to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection; provided, however, that any such additional or modified adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Agent and the DIP Lenders granted under this Order and the DIP Documents. Except as expressly provided herein, nothing contained in this Order (including without limitation, the authorization

to use any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the holders of Prior Liens or the Bridge Loan Lenders.

15. *Perfection of DIP Liens and Adequate Protection Lien.*

(a) The DIP Agent and the Bridge Loan Agent are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent on behalf of the DIP Lenders or the Bridge Loan Agent on behalf of the Bridge Loan Lenders, in their respective sole discretion, shall choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the liens and security interests granted hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of this Order.

(b) A copy of this Order may, in the discretion of the DIP Agent or the Bridge Loan Agent, as the case may be, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such copy of this Order for filing and recording.

(c) The February Debtors and the Guarantor shall execute and deliver to the DIP Agent and the Bridge Loan Agent, as the case may be, all such agreements, financing statements, instruments and other documents as the DIP Agent and the Bridge Loan Agent may

reasonably request to evidence, confirm, validate or perfect the DIP Liens and the Adequate Protection Lien.

(d) In furtherance of the foregoing and without further approval of this Court, each of the February Debtors and the Guarantor is authorized to do and perform all acts to make, execute and deliver all instruments and documents and to pay all fees that may be reasonably required or necessary for the February Debtors' or the Guarantor's performance hereunder or under the DIP Agreement.

16. *Preservation of Rights Granted Under this Order*.

(a) No postpetition claim or postpetition lien having a priority senior to or *pari passu* with those granted by this Order to the DIP Agent, the DIP Lenders, the Bridge Loan Agent and the Bridge Loan Lenders shall be granted or allowed while any portion of the DIP Obligations, the commitments, the Adequate Protection Obligations or the 507(b) Claims remain outstanding, and the DIP Liens and the Adequate Protection Lien shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the February Debtors' or the Guarantor's estates under section 551 of the Bankruptcy Code or subordinated to or made *pari passu* with any other lien or security interest (other than the Prior Liens and the Carve-Out).

(b) Among other things, it shall constitute an Event of Default under the DIP Agreement and a termination of the right to use Cash Collateral (i) if any of the February Debtors or the Guarantor seeks, or if there is entered, any modification of this Order without the prior written consent of the DIP Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent, (ii) if any TSC Debtor seeks, or if there is entered, an order converting or dismissing any of the TSC Cases, or (iii) if an order is entered appointing a

trustee or examiner with expanded powers with respect to any of the February Debtors or the Guarantor.

(c) Except as expressly provided in this Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Obligations, the Adequate Protection Lien, the 507(b) Claims and all other rights and remedies of the DIP Agent, the DIP Lenders, the Bridge Loan Agent and the Bridge Loan Lenders granted by this Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the TSC Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the TSC Cases or by any other act or omission, or (ii) the entry of an order confirming a plan of reorganization in any of the TSC Cases. The terms and provisions of this Order and the DIP Documents shall continue in the TSC Cases, in any successor cases if the TSC Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Adequate Protection Lien, the Adequate Protection Obligations, the DIP Obligations, the Superpriority Claims, the Section 507(b) Claims, any other administrative expense claims granted pursuant to this Order and all other rights and remedies of the DIP Agent, the DIP Lenders, the Bridge Loan Agent and the Bridge Loan Lenders granted by this Order and the DIP Documents shall continue in full force and effect until all DIP Obligations and all Adequate Protection Obligations are indefeasibly paid in full in cash.

17. *Expenses*. As provided in the DIP Documents, the applicable February Debtors will pay all reasonable expenses incurred by the DIP Agent in connection with the preparation, execution, delivery and administration of the DIP Documents, this Order and any other agreements, instruments, pleadings or other documents prepared or reviewed in connection with any of the foregoing, whether or not any or all of the transactions contemplated hereby or by the

DIP Documents are consummated. Payment of such fees shall not be subject to allowance by this Court. Professionals for the DIP Agent (collectively, the "***DIP Agent Professionals***") shall not be required to comply with the U.S. Trustee fee guidelines or submit invoices to the Court, U.S. Trustee or any other party-in-interest absent further court order.

18. *Protection of the DIP Lenders' Rights.* Unless the requisite DIP Lenders under the DIP Documents shall have provided their prior written consent or all DIP Obligations have been paid in full, there shall not be entered in these proceedings, or in any successor case, any order which authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage or collateral interest or other lien on all or any portion of the DIP Collateral and/or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the DIP Liens and Superpriority Claims granted pursuant to this Order to the DIP Lenders or (ii) the use of Cash Collateral for any purpose other than to pay in full the DIP Obligations or as otherwise permitted in the DIP Documents and this Order.

19. *Subsequent Financing*. Without limiting the provisions and protections of paragraph 18 above, if at any time prior to the payment in full of all DIP Obligations (including subsequent to the confirmation of the February Debtors' chapter 11 plan or any other chapter 11 plan or plans with respect to any of the February Debtors), the February Debtors' or the Guarantor's estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) or any other provision of the Bankruptcy Code in violation of the DIP Documents, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agent until payment in full of the DIP Obligations.

20. *Disposition of DIP Collateral*. The February Debtors and the Guarantor shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral without the prior written consent of the requisite DIP Lenders under the DIP Documents (and no such consent shall be implied from any other action, inaction or acquiescence by any DIP Lender or any order of this Court), except for (a) as permitted in the DIP Documents and this Order and (b) approved by the Court to the extent required under applicable bankruptcy law.

21. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in this Order shall be binding upon the February Debtors and all other parties in interest for all purposes.

22. *Limitation on Use of DIP Financing, DIP Collateral, Bridge Loan Collateral, and Cash Collateral*. The February Debtors and the Guarantor shall use the DIP Financing, DIP Collateral and the Bridge Loan Collateral (including, in each case, the Cash Collateral) solely as provided in this Order and the DIP Documents. Notwithstanding anything herein, no DIP Loans under the DIP Agreement, DIP Collateral, Bridge Loan Collateral (including, in each case, as applicable, the Cash Collateral) or the Carve-Out may be used to (a) object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Bridge Loan Documents or the liens or claims granted under this Order, the DIP Documents or the Bridge Loan Documents, (b) assert any claims and defenses or any other causes of action against the DIP Agent, the DIP Lenders, the Bridge Loan Agent or the Bridge Loan Lenders or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, in each case, solely in their capacity as DIP Agent, DIP Lenders, Bridge Loan Agent or Bridge Loan Lenders, as applicable, (c) prevent, hinder or otherwise delay the DIP Agent's or the Bridge Loan Agent's assertion, enforcement or

realization on the Bridge Loan Collateral or the DIP Collateral in accordance with the DIP Documents, the Bridge Loan Documents or this Order, (d) seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, the Bridge Loan Agent or the Bridge Loan Lenders hereunder or under the DIP Documents or the Bridge Loan Documents, in the case of each of the foregoing clauses (a) through (d), without such applicable party's prior written consent or (e) pay any amount on account of any claims arising prior to the February Petition Date unless such payments are (i) approved by an order of this Court and (ii) permitted under the DIP Documents.

23. *Exculpation*. Nothing in this Order, the DIP Documents or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or any DIP Lender any liability for any claims arising from the prepetition or postpetition activities of the February Debtors or the Guarantor in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Agent and the DIP Lenders comply with their obligations under the DIP Documents and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and (b) all risk of loss, damage or destruction of the DIP Collateral shall be borne by the February Debtors and the Guarantor.

24. *DIP Order Governs*. In the event of any inconsistency between the provisions of this Order and the DIP Documents, the provisions of this Order shall govern.

25. *Proofs of Claim*. Upon entry of this Order, the Bridge Loan Agent and Bridge Loan Lenders will not be required to file proofs of claim in any of the TSC Cases or successor

cases for any claim allowed herein. The February Debtors' stipulations in paragraph 3 herein shall be deemed to constitute a timely filed proof of claim for the Bridge Loan Agent and the Bridge Loan Lenders. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the TSC Cases or successor cases to the contrary, the Bridge Loan Agent for the benefit of itself and the Bridge Loan Lenders is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the TSC Cases or successor cases for any claim allowed herein.

26. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Order, including all findings herein, shall be binding upon all parties- in interest in the TSC Cases, including without limitation, the DIP Agent, the DIP Lenders the Bridge Loan Agent, the Bridge Loan Lenders, any statutory committee that may be appointed in the TSC Cases and the TSC Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for any of the TSC Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the TSC Debtors or with respect to the property of the estate of any of the TSC Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Bridge Loan Agent, the Bridge Loan Lenders and the TSC Debtors and their respective successors and assigns; provided, however, that except to the extent expressly set forth in this Order, the DIP Agent, the DIP Lenders, the Bridge Loan Agent and the Bridge Loan Lenders shall have no obligation to permit the use of Cash Collateral, in which such party has an interest, or extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the TSC Debtors.

27. *Limitation of Liability*. In determining to make any DIP Loan under the DIP Agreement, permitting the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Order or the DIP Documents, the DIP Agent, the DIP Lenders, the Bridge Loan Agent and the Bridge Loan Lenders shall not be deemed to be in "control" of the operations of the February Debtors or the Guarantor or, by virtue of the DIP Documents, be deemed a "responsible person" or "owner or operator" with respect to the operation or management of the February Debtors or the Guarantor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, the Bridge Loan Agent or the Bridge Loan Lenders any liability for any claims arising from the prepetition or postpetition activities of any of the February Debtors or the Guarantor and their affiliates (as defined in section 101(2) of the Bankruptcy Code).

28. *Effectiveness*. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof as of the February Petition Date, and there shall be no stay of execution of effectiveness of this Order.

29. For the avoidance of doubt, this Order and each of the provisions thereof are being entered on a final basis.

Dated: _____, 2011
New York, New York

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

DIP Agreement

Exhibit B

Budget

Exhibit B

Credit Agreement

$3,000,000.00

SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION TERM LOAN CREDIT AGREEMENT

Dated as of June [__], 2012

among

TERRESTAR CORPORATION,
TERRESTAR HOLDINGS INC.,
as Borrowers

and

MOTIENT VENTURES HOLDING INC.,
as Guarantor

and

THE LENDERS PARTY HERETO

and

[NEXBANK, SSB]
as Administrative Agent

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SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION TERM LOAN Credit Agreement, dated as of June [__], 2012, among TerreStar Corporation ("*TSC*") and TERRESTAR HOLDINGS, INC. ("*TSH*" and together with TSC, each a "*Borrower*" and collectively, the "*Borrowers*"), Motient Ventures Holding Inc., as guarantor (the "*Guarantor*" and together with the Borrowers, the "*Loan Parties*"), each of the Loan Parties a Delaware corporation and as debtor and debtor in possession under chapter 11 of the Bankruptcy Code, the Lenders (as defined below), and [NEXBANK, SSB], as agent for the Lenders (in such capacity, the "*Administrative Agent*").

WITNESSETH

WHEREAS, on October 19, 2010, the Co-Debtors, including the Guarantor, filed a voluntary petition for relied under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the "*Bankruptcy Court*"), and on February 16, 2011 (the "*Petition Date*"), the Borrowers filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court;

WHEREAS, on February 23, 2011, the Bankruptcy Court entered an order providing for the joint administration of the Co-Debtors' and the Borrowers' cases for procedural purposes, styled as *In re TerreStar Corporation, et al.*, Case No. 11-10612 (SHL).

WHEREAS, the Loan Parties are continuing to operate their respective businesses and manage their respective properties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Loan Parties have requested that the Lenders make available for the purposes specified in this Agreement, a term loan credit facility;

WHEREAS, the Lenders are willing to make available to the Borrowers such term loan credit facility upon the terms and subject to the conditions set forth herein; and

WHEREAS, each of the Loan Parties has agreed to secure its obligations to the Lenders hereunder with, *inter alia*, security interests in, and liens on, substantially all of its property and assets as more fully provided herein.

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

ARTICLE I

DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS

Section 1.1 Defined Terms

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

"*Account*" has the meaning given to such term in the UCC.

"*Administrative Agent*" has the meaning specified in the preamble to this Agreement.

"*Affiliate*" means, with respect to any Person, any other Person directly or indirectly controlling or that is controlled by or is under common control with such Person, each officer, director, general partner or joint-venturer of such Person. For the purposes of this definition, "*control*" means the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"*Agent Affiliate*" has the meaning specified in *Section 12.3(c) (Posting of Approved Electronic Communications)*.

"*Agreement*" means this Senior Secured Super-Priority Debtor in Possession Term Loan Credit Agreement.

"*Alternative Currency*" means any lawful currency other than Dollars that is freely transferable into Dollars.

"*Approved Electronic Communication*" means each notice, demand, communication, information, document and other material that any Loan Party is obligated to, or otherwise chooses to, provide to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein, including (a) any written Contractual Obligation delivered or required to be delivered in respect of any Loan Document or the transactions contemplated therein and (b) any Financial Statement, financial and other report, notice, request, certificate and other information material; provided, however, that, "Approved Electronic Communication" shall exclude (i) any Notice of Borrowing and any other notice, demand, communication, information, document and other material relating to a request for a new Borrowing, (ii) any notice pursuant to Section 2.6 (Optional Prepayments) and Section 2.7 (Mandatory Prepayments) and any other notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any of the conditions set forth in Article III (Conditions To Loans) or any other condition to any Borrowing or other extension of credit hereunder or any condition precedent to the effectiveness of this Agreement.

"*Approved Electronic Platform*" has the meaning specified in *Section 12.3 (Posting of Approved Electronic Communications).*

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

"*Asset Sale*" has the meaning specified in *Section 7.4 (Sale of Assets)*.

"*Assignment and Acceptance*" means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of *Exhibit A (Form of Assignment and Acceptance).*

"*Available Cash*" means, for any month, the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties as of the end of the last day of the immediately preceding month.

"*Bankruptcy Code*" means title 11, United States Code, as amended.

"*Bankruptcy Court*" has the meaning specified in the recitals to this Agreement.

"*Bankruptcy Law*" means each of the Bankruptcy Code, any similar federal, state or foreign Requirement of Law for the relief of debtors or any arrangement, reorganization, insolvency, moratorium or assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Loan Parties and any similar Requirements of Law relating to or affecting the enforcement of creditors' rights generally.

"*Benefit Plan*" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Loan Party incurs or otherwise has any obligation or liability, contingent or otherwise.

"*Borrowers' Accountants*" means Ernst & Young LLP or any other independent nationally-recognized public accountants acceptable to the Requisite Lenders.

"*Borrowing*" means a borrowing consisting of Loans made on the same day by the Lenders ratably according to their respective Commitments.

"*Budget*" means the Initial Budget, together with any amendment thereto that is reasonably acceptable to the Requisite Lenders pursuant to *Section 5.2 (Budget Updates)*.

"*Business Day*" means a day of the year on which banks are not required or authorized to close in New York City.

"*Capital Lease*" means, with respect to any Person, any lease of, or other arrangement conveying the right to use, property by such Person as lessee that would be accounted for as a capital lease on a balance sheet of such Person prepared in conformity with GAAP.

"*Capital Lease Obligations*" means, with respect to any Person, the capitalized amount of all Consolidated obligations of such Person or any of its Subsidiaries under Capital Leases.

"*Carve-Out*" means claims of the following parties for the following amounts: (i) the unpaid fees of the U.S. Trustee or the Clerk of the Bankruptcy Court pursuant to 28 U.S.C. § 1930(a), (ii) subject to the approval of the United States Trustee, fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code, (iii) in the absence of a continuing Event of Default, all professional fees and expenses incurred by the Borrowers and by any official committees approved by the Bankruptcy Court in the Cases and the fees pursuant to 28 U.S.C. § 1930 (collectively, the "*Professional Fees*") and (iv) after the occurrence and during the continuance of an Event of Default, all unpaid Professional Fees that have been incurred prior to the occurrence of such Event of Default and approved by the Bankruptcy Court plus $400,000 in the aggregate for any Professional Fees incurred after the occurrence of any such Event of Default and approved by the Bankruptcy Court; *provided*, *however*, that the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party, including any Loan Party or any official committees approved by the Bankruptcy Court in the Cases, in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Administrative Agent, the Prepetition Agent, the Prepetition Lenders, or the Lenders challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the Obligations or the security interests and Liens of the Secured Parties in respect of, the Prepetition Secured Obligations or the security interests and Liens of the Prepetition Secured Parties in respect thereof; and *provided*, *further*, that as long as no Default or Event of Default shall occur and be continuing, any Loan Party shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable, and the same shall not reduce the Carve-Out.

"*Cases*" means the voluntary cases filed by the Borrowers and the Co-Debtors under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

"*Cash Equivalents*" means (a) securities issued or fully guaranteed or insured by the United States federal government or any agency thereof, (b) certificates of deposit, eurodollar time deposits, overnight bank deposits and bankers' acceptances of any commercial bank organized under the laws of the United States, any state thereof, the District of Columbia, any foreign bank, or its branches or agencies (fully protected against currency fluctuations) that, at the time of acquisition, are rated at least "*A-1*" by S&P or "*P-1*" by Moody's, (c) commercial paper of an issuer rated at least "*A-1*" by S&P or "*P-1*" by Moody's and (d) shares of any money market fund that (i) has at least 95% of its assets invested continuously in the types of investments referred to in *clauses (a)*, *(b)* and *(c)* above, (ii) has net assets whose Dollar Equivalent exceeds $500,000,000 and (iii) is rated at least "*A-1*" by S&P or "*P-1*" by Moody's; *provided*, *however*, that the maturities of all obligations of the type specified in *clauses (a)*, *(b)* and *(c)* above shall not exceed 180 days.

"*Cash Interest*" has the meaning specified in *Section 2.8 (Interest)*.

"*Certificates of Designations*" means the certificates of designations of each series of preferred stock of TSC.

"*Change of Control*" means the occurrence of any of the following: (a) any person or group of persons (within the meaning of the Securities Exchange Act of 1934, as amended) shall have acquired beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended) of 35% or more of the issued and outstanding Voting Stock of TSC, or (b) TSC shall cease to own and control, directly or indirectly, all of the economic and voting rights associated with all of the outstanding Stock of TSH.

"*Claim*" has the meaning given to such term in section 101(5) of the Bankruptcy Code.

"*Co-Debtors*" means collectively, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc. and TerreStar New York, Inc.

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

"*Collateral*" has the meaning specified in *Section 10.1 (Security)*.

"*Collateral Documents*" means this Agreement and any other document executed and delivered by any Loan Party granting a Lien on any of its property to secure payment of the Obligations.

"*Commitment*" means, with respect to each Lender, the commitment of such Lender to make Loans in the aggregate principal amount outstanding (for the avoidance of doubt, including any Commitment Fee) not to exceed the amount set forth opposite such Lender's name on *Schedule I (Commitments)*.

"*Commitment Fee*" means the aggregate amount of commitment fees paid by the Borrowers pursuant to Section 2.9(a) (*Commitment Fee*) hereof in kind.

"*Commodity Account*" has the meaning given to such term in the UCC.

"*Compliance Certificate*" has the meaning specified in *Section 5.1(c) (Financial Statements)*.

"*Confirmation Order*" means the order of the Bankruptcy Court confirming the Plan, which shall be consistent with this Agreement in all material respects and shall otherwise be in form and substance reasonably acceptable to the Borrowers, the Co-Debtors and the Requisite Lenders.

"*Consolidated*" means, with respect to any Person, the consolidation of accounts of such Person and its Subsidiaries in accordance with GAAP.

"*Constituent Documents*" means, with respect to any Person, (a) the articles of incorporation, certificate of incorporation, constitution or certificate of formation (or the equivalent organizational documents) of such Person, (b) the by-laws or operating agreement (or the equivalent governing documents) of such Person and (c) any document setting forth the manner of election or duties of the directors or managing members of such Person (if any) and the designation, amount or relative rights, limitations and preferences of any class or series of such Person's Stock.

"*Contaminant*" means any material, substance or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including any petroleum or petroleum-derived substance or waste, asbestos and polychlorinated biphenyls.

"*Contractual Obligation*" of any Person means any obligation, agreement, undertaking or similar provision

of any Security issued by such Person or of any agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument (excluding a Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its property is subject.

"*Customary Permitted Liens*" means, with respect to any Person, any of the following Liens:

(a) Liens with respect to the payment of taxes, assessments or governmental charges in each case that are not yet due or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP;

(b) Liens of landlords arising by statute and liens of suppliers, mechanics, carriers, materialmen, warehousemen or workmen and other similar Liens, in each case (i) imposed by law or arising in the ordinary course of business, (ii) for amounts not yet due or that are being contested in good faith by appropriate proceedings and (iii) with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP;

(c) pledges and deposits made in the ordinary course of business in compliance with the Federal Employees Liability Act or in connection with workers' compensation, unemployment insurance or other types of social security benefits; pledges and deposits made in the ordinary course of business securing liability for reimbursement or indemnification obligations to (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Loan Party; or deposits made in the ordinary course of business to secure the performance of bids, tenders, sales, contracts (other than for the repayment of borrowed money), leases (other than Capital Lease Obligations), statutory obligations, surety, appeal, customs or performance and return of money bonds, bids, leases, and other obligations of a like nature (including letters of credit in lieu of any such bond or to support the issuance thereof) arising in the ordinary course of business;

(d) financing statements with respect to a lessor's rights in and to personal property leased to such Person in the ordinary course of such Person's business other than through a Capital Lease;

(e) zoning restrictions, easements, leases (other than Capital Lease Obligations), licenses, special assessments, rights-of-way, standard reservations, minor defects and irregularities in title and restrictions on use of real property and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of any Loan Party;

(f) any interest or title of a lessor under any leases or subleases entered into by any Loan Party in the ordinary course of business;

(g) Liens that are contractual rights of set-off (i) relating to the establishment in the ordinary course of business of depository relations with banks not given in connection with the issuance or incurrence of Indebtedness, or (ii) relating to pooled deposit or sweep accounts of the Loan Parties to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Loan Parties;

(h) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights; and

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

"*Default*" means any event that, with the passing of time or the giving of notice or both, would become an Event of Default.

"*Definitive Documents*" means: (a) the Plan; (b) the Disclosure Statement; (c) the Disclosure Statement Order; (d) the Confirmation Order and the (e) Plan Supplement.

"*Deposit Account*" has the meaning given to such term in the UCC.

"*Disclosure Statement*" means the disclosure statement in connection with the Plan, and any appendices, amendments, modifications, supplements, exhibits and schedules relating thereto, substantially in the form attached hereto as *Exhibit I* and filed with the Bankruptcy Court on or about the Effective Date, as it may be amended, supplemented or otherwise modified as set forth in the Plan.

"*Disclosure Statement Order*" means the order to be entered by the Bankruptcy Court (i) approving the Disclosure Statement as containing adequate information required under section 1125 of the Bankruptcy Code and (ii) authorizing the use of the Disclosure Statement for soliciting votes on the Plan, which shall be consistent with this Agreement in all material respects and shall otherwise be in form and substance reasonably acceptable to the Borrowers, the Co-Debtors and the Requisite Lenders.

"*Disqualified Stock*" shall mean, with respect to any Person, any equity ownership interests of such person that, by their terms (or by the terms of any security into which such equity ownership interests are convertible or for which such equity ownership interests are redeemable or exchangeable), or upon the happening of any event, (i) mature or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale), (ii) are convertible or exchangeable other than at the option of the issuer thereof for Indebtedness or Disqualified Stock or (iii) are redeemable at the option of the holder thereof (other than upon the occurrence of a change of control (or similar event), sale or disposition of all or substantially all of the assets of the Borrower and its Subsidiaries, or the acceleration of the Loans, subject, in each case, to the prior payment in full in cash of all Obligations), in whole or in part, in each case prior to 91 days after the Scheduled Termination Date; *provided, however*, that only the portion of the equity ownership interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided, further*, that if such equity ownership interests are issued to any employee or to any plan for the benefit of employees of the Borrowers or the Subsidiaries or by any such plan to such employees, such equity ownership interests shall not constitute Disqualified Stock solely because they may be required to be repurchased by the Borrowers in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; *provided, still further*, that any class of equity ownership interests of such Person that by its terms authorizes such person to satisfy its obligations thereunder by delivery of equity ownership interests that are not Disqualified Stock shall not be deemed to be Disqualified Stock.

"*Dollar Equivalent*" of any amount means, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in an Alternative Currency, the equivalent of such amount in Dollars determined by using the rate of exchange quoted by UBS Securities LLC in New York, New York at 11:00 a.m. (New York time) on the date of determination (or, if such date is not a Business Day, the last Business Day prior thereto) to prime banks in New York for the spot purchase in the New York foreign exchange market of such amount of Dollars with such Alternative Currency and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate.

"*Dollars*" and the symbol "*$*" each mean the lawful money of the United States of America.

"*Domestic Person*" means any "*United States person*" under and as defined in Section 770l(a)(30) of the Code.

"*Domestic Subsidiary*" means any Subsidiary of the Borrower organized under the laws of any state of the United States of America or the District of Columbia.

"*Effective Date*" means the first Business Day on or after the conditions set forth in *Article 3 (Conditions to Loans)* are satisfied.

"*Eligible Assignee*" means a Lender or an Affiliate or Approved Fund of any Lender or any holder of the preferred stock of TSC or any Affiliate or Approved Fund thereof; *provided, however,* that notwithstanding the foregoing, "Eligible Assignee" shall not include any of the Borrowers or any Affiliate or Subsidiary of the Borrowers; *provided further* that any assignment to Globalstar USA, Iridium Satellite Communications or ICO Global Communications shall in any event require the consent of the Requisite Lenders and the Borrower. For the avoidance of doubt, "Eligible Assignee" shall in any event include Solus Alternative Asset Management LP, Highland Capital Management, LP, West Face Long Term Opportunities Global Master L.P., Och-Ziff Capital Management Group, and their respective Affiliates and Approved Funds.

"*Entitlement Holder*" has the meaning given to such term in the UCC.

"*Entitlement Order*" has the meaning given to such term in the UCC.

"*Environmental Laws*" means all applicable Requirements of Law now or hereafter in effect and as amended or supplemented from time to time, relating to pollution or the regulation and protection of human or animal health, safety, the environment or natural resources, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.*); the Hazardous Material Transportation Act, as amended (49 U.S.C. § 5101 *et seq.*); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 *et seq.*); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*); the Toxic Substance Control Act, as amended (15 U.S.C. § 2601 *et seq.*); the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 *et seq.*); the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*); and each of their state and local counterparts or equivalents and any transfer of ownership notification or approval statute, including the Industrial Site Recovery Act (N.J. Stat. Ann. § 13:1K-6 *et seq.*).

"*Environmental Liabilities and Costs*" means, with respect to any Loan Party, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute and whether arising under any Environmental Law, Permit, order or agreement with any Governmental Authority or other Person, in each case relating to any environmental, health or safety condition or to any Release or threatened Release and resulting from the past, present or future operations of, or ownership of property by, such Loan Party.

"*Environmental Lien*" means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

"*Equipment*" has the meaning given to such term in the UCC.

"*ERISA*" means the United States Employee Retirement Income Security Act of 1974, as amended.

"*ERISA Affiliate*" means, collectively, any Loan Party, and any Person under common control or treated as a single employer with any Loan Party within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"*ERISA Event*" means (a) a reportable event described in Section 4043(b) (or, unless the 30-day notice requirement has been duly waived under the applicable regulations, Section 4043(c)) of ERISA with respect to a Title IV Plan, (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA, (c) the complete or partial withdrawal of any ERISA Affiliate from any Multiemployer Plan, (d) with respect to any Multiemployer Plan, the filing of notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination under Section 4041A of ERISA, (e) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA, (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC, (g) the failure to make any required contribution to a Title IV Plan or Multiemployer Plan, (h) the imposition of a lien under Section 412 of the Code or Section 302 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate, (i) the failure of a Benefit Plan or any trust thereunder to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirement of Law to qualify thereunder or (j) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or the imposition of any liability upon any ERISA Affiliate under Title IV of ERISA, other than for PBGC premiums due but not delinquent.

"*Event of Default*" has the meaning specified in *Section 8.1 (Events of Default)*.

"*Excluded Foreign Subsidiary*" means any Subsidiary that is not a Domestic Subsidiary in respect of which either (a) the pledge of all of the Stock of such Subsidiary as Collateral to secure payment of the Obligations of the Loan Parties, or (b) the grant of a Lien on any of its property as Collateral to secure payment of the Obligations of the Loan Parties, would, in the good faith judgment of TSC based on an analysis reasonably satisfactory to the Requisite Lenders, result in materially adverse tax consequences to the Loan Parties and their Subsidiaries, taken as a whole; *provided, however*, that no such Subsidiary shall be an Excluded Foreign Subsidiary if, with substantially similar tax consequences, such Subsidiary has granted a security interest in any of its property to secure, or more than 66% of the Stock of such Subsidiary has been pledged to secure, directly or indirectly, any obligations under any Indebtedness (other than the Obligations) of any Loan Party.

"*Existing Senior Liens*" means all non-avoidable, valid, enforceable and perfected Liens in existence on the Petition Date that are listed on Schedule 7.2.

"*Facility*" means the Commitments and the provisions herein related to the Loans.

"*Federal Reserve Board*" means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"*Final Order*" means a Non-Stayed Order of the Bankruptcy Court pursuant to sections 363 and 364 of the Bankruptcy Code, substantially in the form attached hereto as *Exhibit J*, as it may be amended, supplemented or otherwise modified with the consent of the Requisite Lenders, that, among other things, approves this Agreement and the other Loan Documents.

"*Financial Asset*" has the meaning given to such term in the UCC.

"*Financial Statements*" means the financial statements of TSC and its Subsidiaries delivered in accordance with *Section 4.4 (Financial Statements)* and *Section 5.1 (Financial Statements)*.

"*Fiscal Quarter*" means each of the three-month periods ending on March 31, June 30, September 30 and December 31.

"*Fiscal Year*" means the twelve-month period ending on December 31.

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

"*GAAP*" means generally accepted accounting principles in the United States of America as in effect from time to time set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, that are applicable to the circumstances as of the date of determination.

"*General Intangible*" has the meaning given to such term in the UCC.

"*Governmental Authority*" means any nation, sovereign or government, any state or other political subdivision thereof and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any central bank or stock exchange and any supranational bodies such as the European Union or the European Central Bank.

"*Guarantor*" has the meaning set forth in the recitals to this Agreement.

"*Guaranty Obligation*" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose or intent of such Person in incurring the Guaranty Obligation is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, if required, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss or (v) to supply funds to, or in any other manner invest in, such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if in the case of any agreement described under *clause (b)(i), (ii), (iii), (iv)* or *(v)* above the primary purpose or intent thereof is to provide assurance that Indebtedness of another Person will be paid or discharged, that any agreement relating thereto will be complied with or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof. The amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported.

"*Hedging Contracts*" means all Interest Rate Contracts, foreign exchange contracts, currency swap or option agreements, forward contracts, commodity swap, purchase or option agreements, other commodity price hedging arrangements and all other similar agreements or arrangements designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices.

"*Indebtedness*" of any Person means without duplication (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments or that bear interest, (c) all reimbursement and all obligations with respect to letters of credit, bankers' acceptances, surety bonds and performance bonds, whether or not matured, (d) all indebtedness for the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of

business that are not overdue by more than 90 days, (e) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (f) all Capital Lease Obligations of such Person, (g) all Guaranty Obligations of such Person, (h) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock), (i) all payments that such Person would have to make in the event of an early termination on the date Indebtedness of such Person is being determined in respect of Hedging Contracts of such Person and (j) all Indebtedness of the type referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including Accounts and General Intangibles) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"*Indemnified Matter*" has the meaning specified in *Section 12.4 (Indemnities)*.

"*Indemnitee*" has the meaning specified in *Section 12.4 (Indemnities)*.

"*Information*" means all information received from the Loan Parties relating to the Borrowers or the Co-Debtors or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Loan Parties; *provided* that, in the case of information received from Borrowers after the date hereof, such information is clearly identified at the time of delivery as confidential.

"*Initial Budget*" means the budget for the Loan Parties including bi-weekly (for the months thereafter through the term of the Facility) projections relating to cash flow statements and statement of operations on a consolidating basis, in substantially the form of *Exhibit F (Form of Initial Budget)*.

"*Instruments*" has the meaning given to such term in the UCC.

"*Intellectual Property*" means, collectively, all rights, priorities and privileges of any Borrower relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, trade secrets and Internet domain names, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"*Interest Payment Date*" has the meaning specified in *Section 2.8 (Interest)*.

"*Interest Rate Contracts*" means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest rate insurance.

"*Inventory*" has the meaning given to such term in the UCC.

"*Investment*" means, with respect to any Person, (a) any purchase or other acquisition by such Person of (i) any Security issued by, (ii) a beneficial interest in any Security issued by, or (iii) any other equity ownership interest in, any other Person, (b) any purchase by such Person of all or a significant part of the assets of a business conducted by any other Person, or all or substantially all of the assets constituting the business of a division, branch or other unit operation of any other Person, (c) any loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business as presently conducted) or capital contribution by such Person to any other Person, including all Indebtedness of any other Person to such Person arising from a sale of property by such Person other than in the ordinary course of its business, and (d) any Guaranty Obligation incurred by such Person in respect of Indebtedness of any other Person.

"*IRS*" means the Internal Revenue Service of the United States or any successor thereto.

"*Land*" of any Person means all of those plots, pieces or parcels of land now owned, leased or hereafter acquired or leased or purported to be owned, leased or hereafter acquired or leased (including, in respect of the Loan Parties, as reflected in the most recent Financial Statements) by such Person.

"*Leases*" means, with respect to any Person, all of those leasehold estates in real property of such Person, as lessee, as such may be amended, supplemented or otherwise modified from time to time.

"*Lender*" means each financial institution or other entity that (a) is listed on the signature pages hereof as a "*Lender*" or (b) from time to time becomes a party hereto by execution of an Assignment and Acceptance.

"*Lending Office*" means, with respect to any Lender, the office of such Lender specified as its "*Lending Office*" opposite its name on *Schedule II (Lending Offices and Addresses for Notices)* or on the Assignment and Acceptance by which it became a Lender or such other office of such Lender as such Lender may from time to time specify to TSC and the Administrative Agent.

"*Lien*" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, lien (statutory or other), security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever intended to assure payment of any Indebtedness or the performance of any other obligation, including any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease and any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the UCC or comparable law of any jurisdiction naming the owner of the asset to which such Lien relates as debtor.

"*Loan*" means any loan made by any Lender pursuant to this Agreement, including the Commitment Fee.

"*Loan Documents*" means, collectively, this Agreement, the Notes (if any), the Collateral Documents and each certificate, agreement or document executed by any Loan Party and delivered to the Administrative Agent or any Lender in connection with or pursuant to any of the foregoing.

"*Loan Parties*" has the meaning set forth in the recitals to this Agreement.

"*Material Adverse Change*" means a material adverse change in any of (a) the condition (financial or otherwise), business, performance, operations or properties of the Loan Parties, taken as a whole, except for any such change that is a result of the termination of the Spectrum Lease or any damages caused by such termination, (b) the legality, validity or enforceability of any material Loan Document, (c) the perfection or priority of the Liens granted pursuant to the Collateral Documents, or (d) the rights and remedies of the Administrative Agent or the Lenders under the Loan Documents.

"*Material Adverse Effect*" means an effect that results in or causes, or could reasonably be expected to result in or cause, a Material Adverse Change.

"*Moody's*" means Moody's Investors Service, Inc.

"*Multiemployer Plan*" means a multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate has any obligation or liability, contingent or otherwise.

"*Non-Funding Lender*" has the meaning specified in *Section 2.2(c) (Borrowing Procedures)*.

"*Non-Stayed Order*" means an order of the Bankruptcy Court which is in full force and effect, as to which no stay has been entered and which has not been reversed, modified, vacated or overturned without the consent of the Requisite Lenders.

"*Non-U.S. Lender*" means each Lender that is a Non-U.S. Person.

"*Non-U.S. Person*" means any Person that is not a Domestic Person.

"*Note*" means a promissory note of the Borrowers payable to the order of any Lender in a principal amount equal to the amount of such Lender's Commitment evidencing the aggregate Indebtedness of the Borrowers to such Lender resulting from the Loans owing to such Lender.

"*Notice of Borrowing*" has the meaning specified in *Section 2.2(a) (Borrowing Procedures)*.

"*Obligations*" means the Loans and all other amounts, obligations, covenants and duties owing by the Loan Parties to the Administrative Agent, any Lender, any Affiliate of any of them or any Indemnitee, of every type and description (whether by reason of an extension of credit, loan, guaranty, indemnification, foreign exchange or currency swap transaction, interest rate hedging transaction or otherwise), present or future, arising under this Agreement, any other Loan Document, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and whether or not evidenced by any note, guaranty or other instrument or for the payment of money, including all fees, interest, charges, expenses, attorneys' fees and disbursements and other sums chargeable to the Loan Parties under this Agreement and any other Loan Document.

"*Outstandings*" means, at any particular time, the principal amount of the Loans outstanding (including the Commitment Fee) at such time.

"*Participant*" has the meaning specified in *Section 12.2(g)(i) (Assignments and Participations)*.

"*Patriot Act*" means the USA Patriot Act of 2001 (31 U.S.C. 5318 *et seq.*).

"*PBGC*" means the Pension Benefit Guaranty Corporation or any successor thereto.

"*Permit*" means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under an applicable Requirement of Law.

"*Person*" means an individual, partnership, corporation (including a business trust), joint stock company, estate, trust, limited liability company, unincorporated association, joint venture or other entity or a Governmental Authority.

"*Petition Date*" has the meaning specified in the recitals to this Agreement.

"*Plan*" means a joint chapter 11 plan of reorganization of the Borrowers and the Co-Debtors, substantially in the form attached hereto as *Exhibit H* and filed with the Bankruptcy Court on June [___], 2012 [Docket No. ___][1], as it may be amended, supplemented or otherwise modified (i) with the consent of the Requisite Lenders or (ii) after entry of the Confirmation Order, in accordance with the terms of the Plan and the Confirmation Order.

"*Plan Supplement Documents*" has the meaning give to such term in the Plan.

"*Pledged Debt Instruments*" means all right, title and interest of any Loan Party in Instruments evidencing any Indebtedness owed to such Loan Party.

"*Pledged Stock*" all Stock now or hereafter owned by any Loan Party, including all securities convertible

[1] The Plan will be filed the same day as the DIP Motion. Insert date when known.

into, and rights, warrants, options and other rights to purchase or otherwise acquire, any of the foregoing, the certificates or other instruments representing any of the foregoing and any interest of such Loan Party in the entries on the books of any securities intermediary pertaining thereto and all distributions, dividends and other property received, receivable or otherwise distributed in respect of or exchanged therefor.

"*Prepetition Agent*" means NexBank, SSB in its capacity as administrative agent for the Prepetition Lenders under the Prepetition Credit Agreement.

"*Prepetition Credit Agreement*" means the Term Loan Credit Agreement, dated as of November 19, 2010, among TerreStar Corporation, as Borrower, TerreStar Holdings Inc., as Guarantor, NexBank, SSB as Administrative Agent, and the lenders party thereto from time to time, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"*Prepetition Lenders*" means the lenders under the Prepetition Credit Agreement.

"*Prepetition Secured Obligations*" means the "Secured Obligations" as such term is defined by the Prepetition Credit Agreement.

"*Prepetition Secured Parties*" means the "Secured Parties" as such term is defined by the Prepetition Credit Agreement.

"*Proceeds*" has the meaning given to such term in the UCC.

"*Professional Fees*" has the meaning given to such term in the definition of "Carve-Out."

"*Purchasing Lender*" has the meaning specified in *Section 12.7 (Sharing of Payments, Etc.).*

"*Ratable Portion*" or (other than in the expression "*equally and ratably*") "*ratably*" means, with respect to any Lender, the percentage obtained by (a) at any time prior to the funding of the Loans on the Effective Date, dividing (i) the Commitment of such Lender by (ii) the aggregate Commitments of all Lenders or (b) at any time after the funding of the Loans on the Effective Date, dividing (i) the aggregate outstanding principal balance of the Outstandings owing to such Lender by (ii) the aggregate outstanding principal balance of the Outstandings owing to all Lenders.

"*Real Property*" of any Person means the Land of such Person, together with the right, title and interest of such Person, if any, in and to the streets, the Land lying in the bed of any streets, roads or avenues, opened or proposed, in front of, the air space and development rights pertaining to the Land and the right to use such air space and development rights, all rights of way, privileges, liberties, tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, all fixtures, all easements now or hereafter benefiting the Land and all royalties and rights appertaining to the use and enjoyment of the Land, including all alley, vault, drainage, mineral, water, oil and gas rights, together with all of the buildings and other improvements now or hereafter erected on the Land and any fixtures appurtenant thereto.

"*Register*" has the meaning specified in *Section 2.5(b)(i) (Evidence of Debt).*

"*Release*" means, with respect to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration, in each case, of any Contaminant into the indoor or outdoor environment or into or out of any property owned, leased or operated by such Person, including the movement of Contaminants through or in the air, soil, surface water, ground water or property.

"*Remedial Action*" means all actions required to (a) clean up, remove, treat or in any other way address any Contaminant in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release so that a Contaminant does not migrate or endanger or threaten to endanger public

health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

"*Requirement of Law*" means, with respect to any Person, the common law and all federal, state, local and foreign laws, treaties, rules and regulations, orders, judgments, decrees and other determinations of, concessions, grants, franchises, licenses and other Contractual Obligations with, any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"*Requisite Lenders*" means, collectively, each of Solus Alternative Asset Management LP, Highland Capital Management, LP and West Face Long Term Opportunities Global Master L.P. (or with respect to any of the specified entities, an Affiliate or Approved Fund of such entity that is a Lender). No consent shall be required from any one of the aforementioned specified entities if it (along with with its Affiliates and Approved Funds) does not continue to hold at least 20% of the aggregate Outstandings. If two or more of the aforementioned specified entities do not each hold at least 25% of the aggregate Outstandings, the consent of one or more Lenders holdings more than 50% of the Outstandings shall be sufficient. A Non-Funding Lender shall not be included in the calculation of "*Requisite Lenders.*" For purposes of this definition, all Lenders that are Affiliates shall be treated as a single Lender.

"*Responsible Officer*" means, with respect to any Person, the chief restructuring officer of such Person.

"*Restricted Payment*" means (a) any dividend, distribution or any other payment whether direct or indirect, on account of any Stock or Stock Equivalent of any Loan Party now or hereafter outstanding and (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalent of any Loan Party now or hereafter outstanding.

"*S&P*" means Standard & Poor's Rating Services.

"*Sarbanes-Oxley Act*" means the United States Sarbanes-Oxley Act of 2002, as amended.

"*Scheduled Termination Date*" means the earliest of: (a) the date that is six (6) months after the Effective Date; (b) the effective date of a chapter 11 plan for the Borrowers; and (c) the consummation of the sale of all or substantially all of the assets of the Loan Parties (as determined by the Administrative Agent in its reasonable discretion.

"*Secured Parties*" means the Lenders, the Administrative Agent and any other holder of any Obligation.

"*Securities Account*" has the meaning given to such term in the UCC.

"*Security*" means any Stock, Stock Equivalent, voting trust certificate, bond, debenture, note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

"*Selling Lender*" has the meaning specified in *Section 12.7 (Sharing of Payments, Etc.)*.

"*Special Purpose Vehicle*" means any special purpose funding vehicle identified as such in writing by any Lender to the Administrative Agent.

"*Specified Account*" mean the account in the name of TSC maintained at the Agent with an account number [1612381].

"*Specified Bankruptcy Recoveries*" means proceeds of causes of action arising under chapter 5 of the

Bankruptcy Code (including causes of action for preferences, fraudulent transfers and other avoidance power claims and any recoveries under sections 506(c), 542, 544, 545, 547, 548, 549, 550, 552(b) and 553 of the Bankruptcy Code).

"Spectrum Lease" means the Spectrums Manager Lease Agreement, dated September 17, 2009, by and among TerreStar 1.4 Holdings LLC, TerreStar Corporation and One Dot Four Corp., as it may have been amended, amended and restated, supplemented or otherwise modified from time to time.

"*Stock*" means shares of capital stock (whether denominated as common stock or preferred stock), beneficial, partnership or membership interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or non-voting.

"*Stock Equivalents*" means all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable.

"*Subsidiary*" means, with respect to any Person, any corporation, partnership, limited liability company or other business entity of which an aggregate of 50% or more of the outstanding Voting Stock is, at the time, directly or indirectly, owned or controlled by such Person or one or more Subsidiaries of such Person; *provided*, *however*, with respect to the Borrowers, except with respect to Sections 4.4 and 5.1, the term "Subsidiary" shall only include the Co-Debtors and as to TSC, TSH.

"*Tax Affiliate*" means, with respect to any Person, (a) any Subsidiary of such Person and (b) any Affiliate of such Person with which such Person files or is eligible to file consolidated, combined or unitary tax returns.

"*Tax-Related Person*" means a Person (including a beneficial owner of an interest in a pass-through entity) whose income is realized through or determined by reference to Agent, a Lender, Participant, or any Tax-Related Person of any of the foregoing.

"*Tax Return*" has the meaning specified in *Section 4.7(a) (Taxes).*

"*Taxes*" has the meaning specified in *Section 2.12(a) (Taxes).*

"*Termination Date*" means the earliest of (a) the Scheduled Termination Date and (b) the date on which the Obligations become due and payable pursuant to Section 8.2 (*Remedies*).

"*Title IV Plan*" means a pension plan, other than a Multiemployer Plan, covered by Title IV of ERISA and to which the Borrowers, any of their Subsidiaries or any ERISA Affiliate has any obligation or liability, contingent or otherwise.

"*Transfer*" has the meaning specified in *Section 9.2 (Limitations on Transfers of Claims).*

"*TSC Series A Preferred Shares*" means the $90 million in face amount of outstanding non-voting Series A Cumulative Convertible Preferred Stock of TSC.

"*TSC Series B Preferred Shares*" means the $318.5 million in face amount of outstanding non-voting Series B Cumulative Convertible Preferred Stock of TSC.

"*TSC Specified Subsidiaries*" means, collectively, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Global Ltd., TerreStar New York, Inc. and TerreStar 1.4 Holdings LLC.

"*TSH*" has the meaning set forth in the recitals to this Agreement.

"*TSN Cases*" means the chapter 11 cases of the TSN Debtors.

"*TSN Debtors*" means, collectively, TerreStar Networks Inc., TerreStar National Services, Inc., TerreStar License Inc., TerreStar Networks Holdings (Canada) Inc., TerreStar Networks (Canada) Inc. and 0887729 B.C. Ltd.

"*UCC*" means the Uniform Commercial Code as from time to time in effect in the State of New York; *provided, however*, that, in the event that, by reason of mandatory provisions of law, any of the attachment, perfection or priority of the Administrative Agent's and the Secured Parties' security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

"*U.S. Lender*" means each Lender that is a Domestic Person.

"*U.S. Trustee*" means the United States Trustee for the Southern District of New York.

"*Variance Report*" has the meaning specified in *Section 5.6 (Variance Reporting)*.

"*Voting Stock*" means Stock of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons, of such Person (irrespective of whether, at the time, Stock of any other class or classes of such entity shall have or might have voting power by reason of the happening of any contingency).

"*Wholly-Owned Subsidiary*" of any Person means any Subsidiary of such Person, all of the Stock of which (other than director's qualifying shares, as may be required by law) is owned by such Person, either directly or indirectly through one or more Wholly-Owned Subsidiaries of such Person.

"*Withdrawal Liability*" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

Section 1.2 Computation of Time Periods

In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word "*from*" means "*from and including*" and the words "*to*" and "*until*" each mean "*to but excluding*" and the word "*through*" means "*to and including.*"

Section 1.3 Accounting Terms and Principles

(a) Except as set forth below, all accounting terms not specifically defined herein shall be construed in conformity with GAAP and all accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in conformity with GAAP.

(b) If any change in the accounting principles used in the preparation of the most recent Financial Statements referred to in *Section 5.1* (*Financial Statements*) is hereafter required or permitted by the rules, regulations, pronouncements and opinions of the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successors thereto) and such change is adopted by Borrowers with the agreement of Borrowers' Accountants and

results in a change in any of the calculations required by *Article VII* (*Negative Covenants*) that would not have resulted had such accounting change not occurred, the parties hereto agree to enter into negotiations in order to amend such provisions so as to equitably reflect such change such that the criteria for evaluating compliance with such covenants by the Borrower shall be the same after such change as if such change had not been made; *provided, however,* that no change in GAAP that would affect a calculation that measures compliance with any covenant contained in *Article VII* (*Negative Covenants*) shall be given effect until such provisions are amended to reflect such changes in GAAP.

Section 1.4 Conversion of Foreign Currencies

(a) *Dollar Equivalents.* The Administrative Agent shall determine the Dollar Equivalent of any amount as required hereby, and a determination thereof by the Administrative Agent shall be conclusive absent manifest error. The Administrative Agent may, but shall not be obligated to, rely on any determination made by any Loan Party in any document delivered to the Administrative Agent. The Administrative Agent may determine or redetermine the Dollar Equivalent of any amount on any date either in its own discretion or upon the request of any Lender.

(b) *Rounding-Off.* The Administrative Agent may set up appropriate rounding off mechanisms or otherwise round-off amounts hereunder to the nearest higher or lower amount in whole Dollar or cent to ensure amounts owing by any party hereunder or that otherwise need to be calculated or converted hereunder are expressed in whole Dollars or in whole cents, as may be necessary or appropriate.

Section 1.5 Certain Terms

(a) The terms "*herein*," "*hereof*," "*hereto*" and "*hereunder*" and similar terms refer to this Agreement as a whole and not to any particular Article, Section, subsection or clause in, this Agreement.

(b) Unless otherwise expressly indicated herein, (i) references in this Agreement to an Exhibit, Schedule, Article, Section, clause or sub-clause refer to the appropriate Exhibit or Schedule to, or Article, Section, clause or sub-clause in this Agreement and (ii) the words "*above*" and "*below*", when following a reference to a clause or a sub-clause of any Loan Document, refer to a clause or sub-clause within, respectively, the same Section or clause.

(c) Each agreement defined in this *Article I* shall include all appendices, exhibits and schedules thereto. Unless the prior written consent of each Lender or the Requisite Lenders is required hereunder for an amendment, restatement, supplement or other modification to any such agreement and such consent is not obtained, references in this Agreement to such agreement shall be to such agreement as so amended, restated, supplemented or modified.

(d) References in this Agreement to any statute shall be to such statute as amended or modified from time to time and to any successor legislation thereto, in each case as in effect at the time any such reference is operative.

(e) The term "*including*" when used in any Loan Document means "*including without limitation*" except when used in the computation of time periods.

(f) The terms "*Lender*" and "*Administrative Agent*" include, without limitation, their respective successors.

ARTICLE II

THE FACILITY

Section 2.1 The Commitments

(a) On the terms and subject to the conditions contained in this Agreement, each Lender severally agrees to make loans in Dollars (each a "*Loan*") to the Borrowers on the Effective Date in an aggregate principal amount such that the Outstandings (including any Commitment Fee) owing to such Lender immediately after the making of such Loans do not exceed such Lender's Commitment. After the funding of the Loans on the Effective Date, the Commitment of each Lender shall terminate. Amounts of Loans repaid may not be reborrowed under this Agreement.

Section 2.2 Borrowing Procedures

(a) The Borrowers shall be entitled to request one Borrowing on the Effective Date in an aggregate amount such that the total Outstandings (including any Commitment Fee) immediately after such Borrowing do not exceed $3,000,000.00 by submitting a notice of borrowing to the Administrative Agent not later than 11:00 a.m. (New York time) two Business Days prior to the Effective Date. Such notice shall be in substantially the form of *Exhibit C* (*Form of Notice of Borrowing*) (a "*Notice of Borrowing*"), specifying, (A) the date of the proposed Borrowing and (B) the aggregate amount of such proposed Borrowing.

(b) The Administrative Agent shall give to each Lender prompt notice of the Administrative Agent's receipt of, and shall deliver to each Lender within 24 hours after receipt thereof a copy of, such Notice of Borrowing. Each Lender shall, before 11:00 a.m. (New York time) on the date of the proposed Borrowing, make available to the Administrative Agent at its address referred to in *Section 12.8 (Notices, Etc.)*, in immediately available funds, such Lender's Ratable Portion of such proposed Borrowing. Upon fulfillment (or due waiver in accordance with *Section 12.1 (Amendments, Waivers, Etc.*)) on the Effective Date of the applicable conditions set forth in *Article 3 (Conditions to Loans*), and after the Administrative Agent's receipt of such funds, the Administrative Agent shall make such funds available to the Borrowers.

(c) The failure of any Lender to make on the date specified any Loan or any payment required by it (such Lender being a "*Non-Funding Lender*"), shall not relieve any other Lender of its obligations to make such Loan or payment on such date but no such other Lender shall be responsible for the failure of any Non-Funding Lender to make a Loan or payment required under this Agreement.

(d) Proceeds of each Loan shall be disbursed to the Specified Account. Prior to the receipt by the Borrowers of notice from the Agent pursuant to Section 8.2 (*Remedies*) hereunder, the Borrowers are entitled to use the proceeds of the Loans deposited in the Specified Account in accordance with the Section 4.12 (*Use of Proceeds*) hereof.

Section 2.3 [Reserved.]

Section 2.4 Repayment of Loans

The Borrowers, jointly and severally, promise to repay the entire unpaid principal amount of the Loans, including the Commitment Fee, on the Scheduled Termination Date or earlier, if otherwise required by the terms hereof.

Section 2.5 Evidence of Debt

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing Indebtedness of the Borrowers to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. In addition, each Lender having sold a participation in any of its Obligations or having identified a Special Purpose Vehicle as such to the Administrative Agent, acting as agent of the Borrowers solely for this purpose and for tax purposes, shall establish and maintain at its address referred to in *Section 12.8 (Notices, Etc.)* a record of ownership in which such Lender shall register by book entry (i) the name and address of each such Participant and Special Purpose Vehicle (and each change thereto, whether by assignment or otherwise) and (ii) the rights, interests or obligation of each such Participant or Special Purpose Vehicle in any Obligation, in any Commitment and in any right to receive payment hereunder.

(b) (i) The Administrative Agent, acting as agent of the Borrowers solely for this purpose and for tax purposes, shall establish and maintain at its address referred to in *Section 12.8 (Notices, Etc.)* a record of ownership (the "*Register*") in which the Administrative Agent agrees to register by book entry the Administrative Agent's, each Lender's interest in each Loan, and in the right to receive any payments hereunder and any assignment of any such interest or rights. In addition, the Administrative Agent, acting as agent of the Borrowers solely for this purpose and for tax purposes, shall establish and maintain accounts in the Register in accordance with its usual practice in which it shall record (i) the names and addresses of the Lenders, (ii) the Commitments of each Lender from time to time, (iii) the amount of each Loan made, (iv) the amount of any principal or interest due and payable, and paid, by the Borrower to, or for the account of, each Lender hereunder, and (v) the amount of any sum received by the Administrative Agent hereunder from the Borrowers, whether such sum constitutes principal or interest (and the type of Loan to which it applies), fees, expenses or other amounts due under the Loan Documents and each Lender's share thereof, if applicable.

(i) Notwithstanding anything to the contrary contained in this Agreement, the Loans (including the Notes evidencing such Loans) are registered obligations and the right, title, and interest of the Lenders and their assignees in and to such Loans shall be transferable only upon notation of such transfer in the Register. A Note shall only evidence the Lender's or a registered assignee's right, title and interest in and to the related Loan, and in no event is any such Note to be considered a bearer instrument or obligation. This *Section 2.5(b)* and *Section 12.2* shall be construed so that the Loans are at all times maintained in "*registered form*" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (or any successor provisions of the Code or such regulations).

(c) The entries made in the Register and in the accounts therein maintained pursuant to *clauses (a)* and *(b)* above shall, to the extent

permitted by applicable law, be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrowers to repay the Loans in accordance with their terms. In addition, the Loan Parties, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement. Information contained in the Register with respect to any Lender shall be available for inspection by the Borrowers, the Administrative Agent or such Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Notwithstanding any other provision of the Agreement, in the event that any Lender requests that the Borrowers execute and deliver a promissory note or notes payable to such Lender in order to evidence the Indebtedness owing to such Lender by the Borrower hereunder, the Borrowers shall promptly execute and deliver a Note or Notes to such Lender evidencing any Loans of such Lender, substantially in the form of *Exhibit B (Form of Note).*

Section 2.6 Optional Prepayments

(a) The Borrowers may, upon at least five Business Days' prior notice to the Administrative Agent stating the proposed date and aggregate principal amount of the prepayment, prepay the outstanding principal amount of the Loans, in whole or in part, together with accrued interest to the date of such prepayment on the principal amount prepaid; *provided, however*, that each partial prepayment shall be in an aggregate amount not less than $500,000 or integral multiples of $250,000 in excess thereof, without premium or penalty. Upon the giving of such notice of prepayment, the principal amount of the Loans specified to be prepaid shall become due and payable on the date specified for such prepayment.

(b) The Borrowers shall have no right to prepay the principal amount of any Loan other than as provided in this *Section 2.6*.

Section 2.7 Mandatory Prepayments

(a) [Reserved.]

(b) Until the Obligations have been satisfied and repaid in full in cash, the Loan Parties shall be required to make mandatory repayments of the Loan in an amount equal to (i) 100% of the net sale proceeds from non-ordinary course asset sales, (ii) 100% of insurance and condemnation proceeds received by any Loan Party and (iii) 100% of the net proceeds of any debt (other than Indebtedness permitted to be incurred under Section 7.1) or equity financing obtained by the Loan Parties (which for the avoidance of doubt shall be subject to the limitations set forth herein).

Section 2.8 Interest

(a) *Rate of Interest*. All Loans and the outstanding amount of all other Obligations shall bear interest, in the case of Loans, on the unpaid principal amount thereof from the date such Loans are made and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full, except as otherwise provided in *clause (c)* below, at a rate *per an-*

num equal to 10.50%, which shall be payable in cash ("*Cash Interest*").

(b) *Interest Payments*. (i) Cash Interest accrued on each Loan shall be payable in cash in arrears (A) on the first Business Day of each calendar month, commencing on the first such day following the making of such Loan, (B) upon the payment or prepayment thereof in full or in part and (C) if not previously paid in full, at maturity (whether by acceleration or otherwise) of such Loan (each date specified in this clause (i), an "*Interest Payment Date*"), and (ii) Cash Interest accrued on the amount of all other Obligations shall be payable on demand from and after the time such Obligation becomes due and payable (whether by acceleration or otherwise).

(c) *Default Interest*. Notwithstanding the rates of interest specified in *clause (a)* above or elsewhere herein, effective immediately upon the occurrence of an Event of Default and for as long thereafter as such Event of Default shall be continuing, the principal balance of all Loans and the amount of all other Obligations then due and payable shall bear Cash Interest at a rate that is two percent (2%) per annum in excess of the rate of Cash Interest applicable to such Loans or other Obligations from time to time. Such interest shall be payable in kind on the date that would otherwise be applicable to such interest pursuant to *clause (b)* above or otherwise on demand.

Section 2.9 Fees

(a) *Commitment Fee*. The Borrowers agree to pay to each Lender a commitment fee equal to such Lender's Ratable Portion of $[60,000]. Such commitment fee shall be fully earned and payable on the Effective Date and shall be paid in kind and on the Effective Date shall be capitalized and added to the principal amount of the Loan outstanding.

(b) *Agency Fee*. The Borrowers agree to pay to the Administrative Agent on the Effective Date an Agency Fee of $[15,000].

Section 2.10 Payments and Computations

(a) The Borrowers shall make each payment hereunder (including fees and expenses) not later than 11:00 a.m. (New York time) on the day when due, in Dollars to the Administrative Agent at its address referred to in *Section 12.8 (Notices, Etc.)* in immediately available funds without set-off or counterclaim. The Administrative Agent shall promptly thereafter cause to be distributed immediately available funds relating to the payment of principal, interest or fees to the Lenders, in accordance with the application of payments set forth in *clause (e)* or *(f)* below, as applicable, for the account of their respective Lending Offices; *provided*, *however*, that amounts payable pursuant to *Section 2.11 (Capital Adequacy)* or *Section 2.12 (Taxes)* shall be paid only to the affected Lender or Lenders. Payments received by the Administrative Agent after 11:00 a.m. (New York time) shall be deemed to be received on the next Business Day.

(b) All computations of interest and of fees shall be made by the Administrative Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest and fees are payable. Each determination by the Administrative Agent of a rate of interest hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) Each payment by the Borrowers of any Loan (including interest or fees in respect thereof) and each reimbursement of various costs, expenses or other Obligation shall be made in Dollars.

(d) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fees, as the case may be.

(e) [Reserved.]

(f) The Borrowers hereby irrevocably waive the right to direct the application of any and all payments in respect of the Obligations and any proceeds of Collateral and agrees that the Administrative Agent may, and, upon any of (A) the written direction of the Requisite Lenders, (B) the making of a mandatory prepayment in accordance with *Section 2.7(a) (Mandatory Prepayments)* or (C) the acceleration of the Obligations pursuant to *Section 8.2 (Remedies)*, shall apply all payments in respect of any Obligations and all proceeds of Collateral in the following order:

(i) *first*, to pay interest on and then principal of any portion of the Loans that the Administrative Agent may have advanced on behalf of any Lender for which the Administrative Agent has not then been reimbursed by such Lender or the Borrowers;

(ii) *second*, to pay Obligations in respect of any expense reimbursements or indemnities then due to the Administrative Agent;

(iii) *third*, to pay Obligations in respect of any indemnities then due to the Lenders;

(iv) *fourth*, to pay Obligations in respect of any fees then due to the Administrative Agent and the Lenders;

(v) *fifth*, to pay interest then due and payable in respect of the Loans;

(vi) *sixth*, to pay or prepay principal amounts on the Loans ratably to the aggregate principal amount of such Loans; and

(vii) *seventh*, to the ratable payment of all other Obligations;

provided, *however*, that if sufficient funds are not available to fund all payments to be made in respect of any Obligation described in any of *clauses (i), (ii), (iii), (iv), (v), (vi)* and *(vii)* above, the available funds being applied with respect to any such Obligation (unless otherwise specified in such clause) shall be allocated to the payment of such Obligation ratably, based on the proportion of the Administrative Agent's and each Lender's interest in the aggregate outstanding Obligations described in such clauses. The order of priority set forth in *clauses (i), (ii), (iii), (iv), (v), (vi)* and *(vii)* above may at any time and from time to time be changed by the agreement of each of the Lenders with notice to the Borrowers but without necessity of consent of or approval by the Borrowers, any Secured Party that is not a Lender or by any other Person that is not a Lender. The order of priority set forth in *clauses (i), (ii), (iii)* and *(iv)* above may be changed only with the prior written consent of the Administrative Agent in addition to that of each of the Lenders. Payments in respect of principal and interest due in respect of the Loans received by the Administrative Agent shall be distributed to each Lender in accordance with such Lender's Ratable Portion. All payments of fees and all other payments in respect of any other Obligation shall be allocated among such of the Administrative Agent and the Lenders as are entitled thereto and, for such payments allocated

to the Lenders, in proportion to their respective Ratable Portions.

Section 2.11 Capital Adequacy

If at any time any Lender reasonably determines that (a) the adoption of, or any change in or in the interpretation of, any law, treaty or governmental rule, regulation or order after the date of this Agreement regarding capital adequacy, (b) compliance with any such law, treaty, rule, regulation or order or (c) compliance with any guideline or request or directive from any central bank or other Governmental Authority (whether or not having the force of law) shall have the effect of reducing the rate of return on such Lender's (or any corporation controlling such Lender's) capital as a consequence of its obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such adoption, change, compliance or interpretation, then, upon demand from time to time by such Lender (with a copy of such demand to the Administrative Agent) setting forth in reasonable detail such adoption, change, compliance or interpretation and the calculation of such reduced rate of return, the Borrower shall pay to the Administrative Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender for such reduction. A certificate as to such amounts submitted to the Borrowers and the Administrative Agent by such Lender in good faith shall be conclusive and binding for all purposes absent manifest error.

Section 2.12 Taxes

(a) Except as otherwise provided in this *Section 2.12*, any and all payments by any Loan Party under each Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (i) in the case of each Lender and the Administrative Agent (A) taxes measured by its net income, and franchise taxes imposed on it, branch profits taxes imposed on it and similar taxes imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender or the Administrative Agent (as the case may be) is organized and (B) any U.S. withholding taxes payable with respect to payments under the Loan Documents under laws (including any statute, treaty or regulation) in effect on the Effective Date (or, in the case of (x) an Eligible Assignee, the date of the Assignment and Acceptance and (y) a successor Administrative Agent, the date of the appointment of such Administrative Agent applicable to such Lender or the Administrative Agent, as the case may be, but not excluding any U.S. withholding taxes payable as a result of any change in such laws occurring after the Effective Date (or the date of such Assignment and Acceptance or the date of such appointment of such Administrative Agent)) and (ii) in the case of each Lender, taxes measured by its net income, and franchise taxes imposed on it as a result of a present or former connection between such Lender and the jurisdiction of the Governmental Authority imposing such tax or any taxing authority thereof or therein (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "*Taxes*"). If any Taxes shall be required by law to be deducted from or in respect of any sum payable under any Loan Document to any Lender or the Administrative Agent (w) the sum payable shall be increased as may be necessary so that, after making all required deductions (including deductions applicable to additional sums payable under this *Section 2.12*), such Lender or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (x) the relevant Loan Party shall make such deductions, (y) the relevant Loan Party shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law and (z) the relevant Loan Party shall deliver to the Administrative Agent evidence of such payment.

(b) In addition, each Loan Party agrees to pay any

present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies of the United States or any political subdivision thereof or any applicable foreign jurisdiction, and all liabilities with respect thereto, in each case arising from any payment made under any Loan Document or from the execution, delivery or registration of, or otherwise with respect to, any Loan Document (collectively, "*Other Taxes*"). Each Loan Party authorizes the Administrative Agent to pay such Other Taxes in the name of such Loan Party and, for such purpose, to submit a Notice of Borrowing for Loans in the currency of such Other Taxes that are owed (or, if not available, in Dollars) (i) after the occurrence and during the continuance of any Event of Default and in respect of any event occurring on the Effective Date and (ii) otherwise, with the consent of such Loan Party, in the name of the Loan Party owing such Other Taxes and in an aggregate principal amount not to exceed all amounts owing in respect of such Other Taxes. If such a Notice of Borrowing is prepared by the Administrative Agent, the Borrowing corresponding thereto shall be made without regard to the conditions precedent set forth in *Section 3.2 (Conditions Precedent to each Loan)* and the proceeds thereof shall be disbursed to the Administrative Agent solely to pay such Other Taxes (any excess thereof to be used to repay such Borrowing).

(c) Each Loan Party shall, jointly and severally, indemnify each Lender and the Administrative Agent for the full amount of Taxes and Other Taxes (including any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this *Section 2.12*) paid by such Lender or the Administrative Agent (as the case may be) and any liability (including for penalties, interest and reasonable expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within 10 days from the date such Lender or the Administrative Agent (as the case may be) makes written demand therefor.

(d) As soon as practical after the date of any payment of Taxes or Other Taxes by any Loan Party, the Loan Parties shall furnish to the Administrative Agent, at its address referred to in *Section 12.8 (Notices, Etc.)*, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Requisite Lenders.

(e) If any Loan Party or any other Person is required by applicable Law to make any deduction or withholding on account of any Taxes or Other Taxes from any sum paid or payable under any of the Loan Documents: (i) the Loan Parties shall notify the Administrative Agent of any such requirement or any change in any such requirement as soon as any of the applicable Loan Parties becomes aware of it; (ii) the Loan Parties shall pay any such Taxes or Other Taxes before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for its own account or (if that liability is imposed on the Administrative Agent or such Lender, as the case may be) on behalf of and in the name of the Administrative Agent or such Lender; (iii) the sum payable by such Loan Party in respect of which the relevant deduction, withholding, or payment, is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding, or payment of all Taxes or Other Taxes, the Administrative Agent or such Lender, as the case may be, and each of their Tax-Related Persons receives on the due date and retains a net sum equal to what it would have received and retained had no such deduction, withholding, or payment been required or made; and (iv) within 30 days after making any such deduction or withholding, and within 30 days after the due date of payment of any Tax or Other Tax which it is required by clause (ii) above to pay, the applicable Loan Party shall deliver to Administrative Agent evidence reasonably satisfactory to the other affected parties of such deduction, withholding, and pay-

ment and of the remittance thereof to the relevant taxing or other authority.

(f) Without prejudice to the survival of any other agreement of any Loan Party hereunder or under the guaranty pursuant to Article XI (Guaranty), the agreements and obligations of such Loan Party contained in this *Section 2.12* shall survive the payment in full of the Obligations.

(g) Each Non-U.S. Lender that is entitled to an exemption from U.S. withholding tax, or that is subject to such tax at a reduced rate under an applicable tax treaty, shall (v) on or prior to the Effective Date in the case of each Non-U.S. Lender that is a signatory hereto, (w) on or prior to the date of the Assignment and Acceptance pursuant to which such Non-U.S. Lender becomes a Lender or on or prior to the date a successor Administrative Agent becomes the Administrative Agent, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it to the Borrowers and the Administrative Agent, and (z) from time to time thereafter if requested by the Borrowers or the Administrative Agent, provide the Administrative Agent and the Borrowers with two completed originals of each of the following, as applicable:

(i) (A) Form W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or business) or any successor form, (B) Form W-8IMY (claiming foreign intermediary, foreign flow through entity or U.S. branch status, (C) Form W-8BEN (claiming exemption from, or a reduction of, U.S. withholding tax under an income tax treaty) or any successor form, (D) in the case of a Non-U.S. Lender claiming exemption under Sections 871(h) or 881(c) of the Code, a Form W-8BEN (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form; (E) in the case of a Non-U.S. Lender claiming exemption under Sections 871(h) or 881(c) of the Code, a Form W-8BEN (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form or (F) any other applicable form, certificate or document prescribed by the IRS certifying as to such Non-U.S. Lender's entitlement to such exemption from U.S. withholding tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender under the Loan Documents. Each Lender required to deliver any forms, certificates, or other evidence with respect to United States federal income Tax-withholding matters pursuant to this Section 2.12(g) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates, or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates, or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Borrowers two new original copies of Internal Revenue Service Form W-8BEN, W-8IMY, or W-8ECI, or a Certificate Regarding Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by the Borrowers to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income Tax with respect to payments to such Lender under the Loan Documents or is subject to deduction or withholding at a reduced rate, or notify the Administrative Agent and the Borrowers of its inability to deliver any such forms, certificates, or other evidence. Unless the Borrowers and the Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender are not subject to U.S. withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, the Loan Parties and the Administrative Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

(ii) Each U.S. Lender shall (v) on or prior to the Effective Date in the case

of each U.S. Lender that is a signatory hereto, (w) on the date of the Assignment and Acceptance pursuant to which such U.S. Lender becomes a Lender or on or prior to the date a successor Administrative Agent becomes the Administrative Agent hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it to the Borrowers and the Administrative Agent, and (z) from time to time if requested by the Borrowers or the Administrative Agent, provide the Administrative Agent and the Borrowers with two completed originals of Form W-9 (certifying that such U.S. Lender is entitled to an exemption from U.S. backup withholding tax) or any successor form. Solely for purposes of this *Section 2.12(g)*, a U.S. Lender shall not include a Lender or an Administrative Agent that may be treated as an exempt recipient based on the indicators described in Treasury Regulation section 1.6049-4(c)(1)(ii).

(h) Any Lender claiming any additional amounts payable pursuant to this *Section 2.12* shall use its reasonable efforts (consistent with its internal policies and Requirements of Law) to change the jurisdiction of its Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that would be payable or may thereafter accrue and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

ARTICLE III

CONDITIONS TO LOANS

Section 3.1 Conditions Precedent to Loans

The obligation of each Lender to make the Loans requested to be made by it on the Effective Date is subject to the satisfaction or due waiver in accordance with *Section 12.1 (Amendments, Waivers, Etc.)* of each of the following conditions precedent on or before the Effective Date.

(a) *Initial Budget*. The Borrowers shall have delivered the Initial Budget and weekly cash flow forecasts of the Borrowers for the next succeeding 6 months and a financial projection of the Loan Parties for the remainder of the Fiscal Year in which the Effective Date occurs, including weekly balance sheet, profit and loss and cash flow figures, to the Administrative Agent and the Lenders, each of which shall be in form and substance reasonably acceptable to the Requisite Lenders.

(b) *Bankruptcy Court Order*.

(i) The Bankruptcy Court shall have entered the Final Order, certified by the Clerk of the Bankruptcy Court as having been duly entered. The motion seeking entry of the Final Order (but not any declarative affidavits in support hereof) shall have been in form and substance reasonably satisfactory to the Borrowers and the Requisite Lenders. The Final Order shall be in form and substance reasonably satisfactory to the Borrowers and the Requisite Lenders and in full force and effect and shall not have been vacated, reversed, modified, amended, stayed or be subject to appeal without the prior written consent of the Requisite Lenders. The automatic stay shall have been modified pursuant to the Final Order to permit the creation and perfection of the Secured Parties' Liens and security interests and shall have been automatically vacated, subject to the terms of the Final Order, to permit enforcement of Secured Parties' rights and remedies under this Agreement and the other Loan Documents.

(c) *No Litigation.* There shall exist no action, suit, investigation or proceeding pending, or to the knowledge of the Borrowers, threatened in writing, in any court or before any arbitrator or government authority against any Borrower, except the Cases and as set forth on Schedule 4.6.

(d) [Reserved.]

(e) *Certain Documents.* The Administrative Agent shall have received on or prior to the Effective Date each of the following, each dated the Effective Date unless otherwise indicated or agreed to by each of the Lenders, in form and substance reasonably satisfactory to the Requisite Lenders:

(i) this Agreement, duly executed and delivered by the Borrowers and, for the account of each Lender requesting the same, a Note of the Borrowers conforming to the requirements set forth herein;

(ii) [Reserved];

(iii) a copy of the articles or certificate of incorporation (or equivalent Constituent Document) of each Loan Party, certified as of a recent date by the Secretary of State of the state of organization of such Loan Party, together with certificates of such official attesting to the good standing of each such Loan Party, as of a recent date;

(iv) a certificate of the Secretary or an Assistant Secretary of each Loan Party as of a recent date certifying (A) the names and true signatures of each officer of such Loan Party that has been authorized to execute and deliver any Loan Document or other document required hereunder to be executed and delivered by or on behalf of such Loan Party, (B) the certificate of incorporation and by-laws (or equivalent Constituent Documents) of such Loan Party as in effect on the date of such certification, (C) the resolutions of such Loan Party's Board of Directors (or equivalent governing body) approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party and (D) that there have been no changes in the certificate of incorporation (or equivalent Constituent Document) of such Loan Party from the certificate of incorporation (or equivalent Constituent Document) delivered pursuant to *clause (iii)* above within the thirty day period immediately prior to the Effective Date;

(v) a certificate of a Responsible Officer to the effect that (A) the condition set forth in *Section 3.2(b) (Conditions Precedent to Each Loan)* has been satisfied, (B) the making of the Loans on such date does not violate any Requirement of Law on the date of or immediately following such Loan and is not enjoined, temporarily, preliminarily or permanently, and (C) no litigation not listed on *Schedule 4.6 (Litigation)* has been commenced against any Loan Party or TerreStar 1.4 Holdings, LLC that would have a Material Adverse Effect;

(f) *Fee and Expenses Paid.* There shall have been paid to the Administrative Agent, for the account of the Administrative Agent and the Lenders, as applicable, all fees and expenses of the Administrative Agent (including reasonable fees and expenses of one counsel to the Administrative Agent) due and payable on or before the Effective Date.

(g) *Consents, Etc.* Each Loan Party shall have received all consents and authorizations required pursuant to any material Contractual Obligation with any other Person and shall have obtained all Permits of, and effected all notices to and filings with, any Governmental Authority, in each case, as may be

necessary to allow each Loan Party lawfully (i) to execute, deliver and perform, in all material respects, their respective obligations hereunder and under the Loan Documents to which each of them, respectively, is, or shall be, a party and each other agreement or instrument to be executed and delivered by each of them, respectively, pursuant thereto or in connection therewith and (ii) to create and perfect the Liens on the Collateral to be owned by each of them in the manner and for the purpose contemplated by the Loan Documents.

(h) *Retention of Technical Consultant.* The Loan Parties shall have filed a motion seeking authority to retain RKF Engineering Solutions, LLC as a technical consultant in connection with an analysis of potential uses of certain spectrum and rights associated therewith held by TerreStar 1.4 Holdings LLC on terms reasonably acceptable to the Requisite Lenders.

(i) *Modification of Prepetition Credit Agreement*. The Prepetition Credit Agreement shall have been modified such that none of the Prepetition Agent and the Prepetition Lenders shall be entitled to seek reimbursement for costs and expenses (including costs and expenses of counsel) incurred from and after June 1, 2012 thereunder.

(j) *Appointment of a Chief Restructuring Officer*. Each of the Loan Parties, TSC Specified Subsidiaries and TerreStar 1.4 Holdings LLC shall have appointed Eugene I. Davis as chief restructuring officer, on terms reasonably acceptable to the Requisite Lenders. Such appointment, and the terms thereof, shall have been approved by the Bankruptcy Court in a Non-Stayed Order in form and substance reasonably acceptable to the Requisite Lenders.

(k) *Representations and Warranties; No Defaults*. The following statements shall be true on the Effective Date, both before and after giving effect thereto and to the application of the proceeds thereof:

(i) the representations and warranties set forth in *Article IV (Representations and Warranties)* and in the other Loan Documents shall be true and correct in all material respects on and as of the Effective Date; and

(ii) no Default or Event of Default shall have occurred and be continuing.

(l) *No Legal Impediments*. The making of the Loans on the Effective Date does not violate any Requirement of Law on the date of or immediately following such Loan and is not enjoined, temporarily, preliminarily or permanently.

(m) *Additional Matters*. The Administrative Agent shall have received such additional documents, information and materials as the Administrative Agent may reasonably request.

Section 3.2 Determinations of Borrowing Conditions

For purposes of determining compliance with the conditions specified in *Section 3.1 (Conditions Precedent to Loans)*, each Lender shall be deemed to have consented to, approved, accepted or be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Borrowing

specifying its objection thereto and such Lender shall not have made available to the Administrative Agent such Lender's Ratable Portion of such Borrowing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

To induce the Lenders and the Administrative Agent to enter into this Agreement, each of the Borrowers represents and warrants each of the following to the Lenders and the Administrative Agent, on and as of the Effective Date and after giving effect to the making of the Loans and the other financial accommodations on the Effective Date:

Section 4.1 Corporate Existence; Compliance with Law

Each Loan Party (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) is duly qualified to do business as a foreign entity and in good standing under the laws of each jurisdiction where such qualification is necessary, except where the failure to be so qualified or in good standing would not, in the aggregate, have a Material Adverse Effect, (c) subject to approval of the Bankruptcy Court, has all requisite power and authority and the legal right to own, pledge, mortgage and operate its properties, to lease the property it operates under lease and to conduct its business as now or currently proposed to be conducted, (d) is in compliance with its Constituent Documents, (e) is in compliance with all applicable Requirements of Law except where the failure to be in compliance would not, in the aggregate, have a Material Adverse Effect and (f) has all necessary Permits from or by, has made all necessary filings with, and has given all necessary notices to, each Governmental Authority having jurisdiction, to the extent required for such ownership, operation and conduct, except for Permits or filings that can be obtained or made by the taking of ministerial action to secure the grant or transfer thereof or the failure to obtain or make would not, in the aggregate, have a Material Adverse Effect.

Section 4.2 Corporate Power; Authorization; Enforceable Obligations

(a) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby:

(i) subject to the entry of the Final Order, are within such Loan Party's corporate, limited liability company, partnership or other powers;

(ii) have been or, at the time of delivery thereof pursuant to *Article III (Conditions To Loans)* will have been duly authorized by all necessary action, including the consent of shareholders, partners and members and the Bankruptcy Court where required;

(iii) subject to the entry of the Final Order, do not and will not (A) contravene or violate such Loan Party's or TerreStar 1.4 Holdings LLC's respective Constituent Documents, (B) violate any other Requirement of Law applicable to such Loan Party or TerreStar 1.4 Holdings LLC (including Regulations T, U and X of the Federal Reserve Board), or any order or decree of any Governmental Authority or arbitrator applicable to such Loan Party or TerreStar 1.4 Holdings LLC, (C) conflict with or result in the breach of, or constitute a default under, or result in or permit the termination or acceleration of, any other material Contractual Obligation of such Loan Party or TerreStar 1.4 Holding LLC or (D) result in the creation or imposition of any Lien upon any property of such Loan Party or TerreStar 1.4 Holdings LLC, other than those in favor of the Secured Parties pursuant to the Collateral Documents and the Final Order; and

(iv) subject to the entry of the Final Order, do not require the consent of,

authorization by, approval of, notice to, or filing or registration with, any Governmental Authority or any other Person, other than those listed on *Schedule 4.2 (Consents)* and that have been or will be, prior to the Effective Date, obtained or made, copies of which have been or will be delivered to the Administrative Agent pursuant to *Section 3.1 (Conditions Precedent to Loans)*, and each of which on the Effective Date will be in full force and effect and, with respect to the Collateral, filings required to perfect the Liens created by the Collateral Documents.

(b) This Agreement has been, and each of the other Loan Documents will have been upon delivery thereof pursuant to the terms of this Agreement, duly executed and delivered by each Loan Party party thereto. Subject to the entry of the Final Order, this Agreement is, and the other Loan Documents will be, when delivered hereunder, the legal, valid and binding obligation of each Loan Party party thereto, enforceable against such Loan Party in accordance with its terms.

Section 4.3 Ownership of Guarantors; Subsidiaries; Borrower Information

(a) The authorized capital stock of TSH consists of 100,000 shares of common stock, $0.01 par value per share, of which 100 shares are issued and outstanding. All of the outstanding capital stock of TSH has been validly issued, is fully paid and non-assessable and is owned beneficially and of record by TSC, free and clear of all Liens other than the Lien in favor of the Secured Parties created by this Agreement and the Final Order. No Stock of TSH is subject to any option, warrant, right of conversion or purchase or any similar right. There are no agreements or understandings to which TSH is a party with respect to the voting, sale or transfer of any shares of Stock of TSH or any agreement restricting the transfer or hypothecation of any such shares.

(b) Set forth on *Schedule 4.3 (Ownership of Subsidiaries)* is a complete and accurate list showing, as of the Effective Date, all TSC Specified Subsidiaries and, as to each TSC Specified Subsidiary, the jurisdiction of its organization, the number of shares of each class of Stock authorized (if applicable), the number outstanding on the Effective Date and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the relevant Loan Party. No Stock of any TSC Specified Subsidiary is subject to any outstanding option, warrant, right of conversion or purchase of any similar right. All of the outstanding Stock of each TSC Specified Subsidiary owned (directly or indirectly) by any Loan Party has been validly issued, is fully paid and non-assessable (to the extent applicable) and is owned (directly or indirectly) by the relevant Loan Party, free and clear of all Liens (other than any Lien in favor of the Secured Parties created pursuant to this Agreement and the Final Order), options, warrants, rights of conversion or purchase or any similar rights. No Loan Party is a party to, or has knowledge of, any agreement restricting the transfer or hypothecation of any Stock of any such TSC Specified Subsidiary owned by any Loan Party, other than the Loan Documents. No Loan Party owns or holds, directly or indirectly, any Stock of any Person other than (i) the TSC Specified Subsidiaries, (ii) TerreStar Networks Inc. and any Stock of any Person owned, directly and indirectly, by TerreStar Networks Inc., and (iii) Investments permitted by *Section 7.3 (Investments)*.

Section 4.4 Financial Statements

(a) [Reserved].

(b) No Loan Party has any material obligation, contingent liability or liability for taxes, long-term leases or unusual forward or long-term

commitment that is not reflected in the Financial Statements referred to in *clause (a)* above or in the notes thereto and not otherwise permitted by this Agreement.

Section 4.5 Material Adverse Change

Since March 31, 2012, except for as may otherwise be disclosed in writing to the Lenders prior to the Effective Date, there has been no Material Adverse Change and there have been no events or developments that, in the aggregate, have had a Material Adverse Effect.

Section 4.6 Litigation

Other than the Cases and the TSN Cases and except as set forth on *Schedule 4.6 (Litigation)*, there are no actions, investigations or proceedings affecting any Loan Party threatened in writing (to the knowledge of any Loan Party) or pending before any court, Governmental Authority or arbitrator other than those that, in the aggregate, would not have a Material Adverse Effect. The performance of any action by any Loan Party required or contemplated by any Loan Document is not restrained or enjoined (either temporarily, preliminarily or permanently).

Section 4.7 Taxes

Except as set forth in *Schedule 4.7*:

(a) All federal, state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "*Tax Returns*") required to be filed by the Loan Parties or any of their Tax Affiliates have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for non-payment thereof except where contested in good faith and by appropriate proceedings if adequate reserves therefor have been established on the books of the Loan Parties or such Tax Affiliate in conformity with GAAP, which Taxes, if not paid or adequately provided for, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority, other than as could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect as of the Effective Date. Proper and accurate amounts have been withheld by the Loan Parties and each of their Tax Affiliates from their respective employees for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities, other than as could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect as of the Effective Date.

(b) None of the Loan Parties or any of their Tax Affiliates has (i) executed or filed with the IRS or any other Governmental Authority any agreement or other document extending, or having the effect of extending, the period for the filing of any Tax Return or the assessment or collection of any charges, (ii) incurred any obligation under any tax sharing agreement or arrangement other than those of which the Administrative Agent has received a copy prior to the date hereof or (iii) been a member of an affiliated, combined or unitary group other than the group of which the Loan Parties (or their Tax Affiliate) is the common parent.

Section 4.8 Full Disclosure

(a) The written information (other than forward-looking financial information) concerning the Loan Parties prepared or furnished by or on behalf of any Borrower in connection with this Agreement or the consummation of the transactions contemplated hereunder taken as a whole does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading at the time such statements were made. All facts known to any Loan Party and material to an understanding of the financial condition, business, properties or prospects of the Loan Parties taken as one enterprise have been disclosed to the Lenders.

Section 4.9 Margin Regulations

None of the Loan Parties are engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Federal Reserve Board), and no proceeds of any Loan will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock in contravention of Regulation T, U or X of the Federal Reserve Board.

Section 4.10 No Burdensome Restrictions; No Contract Defaults

(a) No Loan Party (i) is a party to any Contractual Obligation the compliance with one or more of which would have, in the aggregate, a Material Adverse Effect or the performance of which by any thereof, either unconditionally or upon the happening of an event, would result in the creation of a Lien (other than a Lien permitted under *Section 7.2 (Liens, Etc.)*) on the assets of any thereof or (ii) is subject to one or more charter or corporate restrictions that would, in the aggregate, have a Material Adverse Effect.

(b) No Loan Party is in default under or with respect to any post-petition Contractual Obligation owed by it, and, to the knowledge of the Loan Parties, no other party is in default under or with respect to any post-petition Contractual Obligation owed to any Loan Party, other than, in either case, those defaults that, in the aggregate, would not have a Material Adverse Effect, except as set forth on Schedule 4.10(b).

(c) No Default or Event of Default has occurred and is continuing.

(d) To the best knowledge of the Loan Parties, there are no Requirements of Law applicable to any Loan Party or any Subsidiary of any Loan Party the compliance with which by such Loan Party or such Subsidiary, as the case may be, would, in the aggregate, have a Material Adverse Effect.

Section 4.11 Investment Company Act; Public Utility Holding Company Act

No Loan Party is (a) an "*investment company*" or an "*affiliated person*" of, or "*promoter*" or "*principal underwriter*" for, an "*investment company,*" as such terms are defined in the Investment Company Act of 1940, as amended or (b) a "*holding company*" or an "*affiliate*" of a "*holding company*" or a "*subsidiary company*" of a "*holding company,*" as each such term is defined and used in the Public Utility Holding Company Act of 1935, as amended, or, as the case may be, the Public Utility Holding Company Act of 2005, enacted as part of the Energy Policy Act of 2005, Pub. L. No. 109-58 as codified at §§ 1261 *et seq*.,

and the regulations adopted thereunder, as amended.

Section 4.12 Use of Proceeds

The proceeds of the Loans shall be used by the Borrowers, solely to (i) pay fees and expenses associated with the Facility, (ii) make one or more intercompany loans to certain Co-Debtors, TerreStar Global Ltd. and TerreStar 1.4 Holdings LLC in an aggregate amount not to exceed $[60,000] or, with the consent of the Requisite Lenders, a greater amount, (iii) in accordance with the Budget, provide for the Loan Parties' ongoing working capital requirements, and (iv) make payments and settlements of prepetition claims, subject to the reasonable consent of the Requisite Lenders. Notwithstanding the foregoing (A) in the absence of a continuing Event of Default, the proceeds of the Loans may be used to pay all Professional Fees incurred by the Loan Parties in the Cases and (B) after the occurrence and during the continuance of an Event of Default, the proceeds of the Loans may be used to pay the unpaid Professional Fees that have been incurred prior to the occurrence of such Event of Default and approved by the Bankruptcy Court plus $400,000 in the aggregate for any Professional Fees incurred after the occurrence of any such Event of Default and approved by the Bankruptcy Court.

Section 4.13 Insurance

Schedule 4.13 (Insurance) sets forth as of the Effective Date a summary of all insurance policies maintained by the Loan Parties. All policies of insurance of any kind or nature of the Loan Parties are in full force and effect and are of a nature and provide such coverage as is sufficient and as is customarily carried by businesses of the size and character of such Person. None of the Loan Parties has been refused insurance for any material coverage for which it had applied or had any policy of insurance terminated (other than at its request).

Section 4.14 Labor Matters

(a) There are no strikes, work stoppages, slowdowns or lockouts pending or threatened against or involving any Loan Party, other than those that, in the aggregate, would not have a Material Adverse Effect.

(b) There are no unfair labor practices, grievances, complaints or arbitrations pending, or, to any Loan Party's knowledge, threatened, against or involving any Loan Party, nor are there any arbitrations or grievances threatened involving any Loan Party, other than those that, in the aggregate, would not have a Material Adverse Effect.

(c) Except as set forth on Schedule 4.14 (Labor Matters), as of the Effective Date, there is no collective bargaining agreement covering any employee of any Loan Party.

(d) Schedule 4.14 (Labor Matters) sets forth, as of the date hereof, all material consulting agreements, executive employment agreements, executive compensation plans, deferred compensation agreements, employee stock purchase and stock option plans and severance plans of any Loan Party.

Section 4.15 ERISA

(a) Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 501 of the Code or other Requirements of Law so qualifies, except where such failures, in the aggregate, would not have a Material Adverse Effect.

(b) Except for those that would not, in the aggregate, have a Material Adverse Effect, (i) each Benefit Plan is in compliance in all material respects with applicable provisions of ERISA, the Code and other Requirements of Law, (ii) there are no existing or pending (or, to the knowledge of any Loan Party, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigations involving any Benefit Plan to which any Loan Party incurs or otherwise has or could have an obligation or any liability and (iii) other than the Cases, no ERISA Event is reasonably expected to occur.

(c) On the Effective Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding that could reasonably be expected to have, in the aggregate, a Material Adverse Effect.

(d) No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made that could reasonably be expected to have, in the aggregate, a Material Adverse Effect.

Section 4.16 Environmental Matters

(a) The operations of each Loan Party have been and are in compliance with all Environmental Laws, including obtaining and complying with all required environmental, health and safety Permits, other than non-compliances that, in the aggregate, would not have a Material Adverse Effect.

(b) No Loan Party or any Real Property currently or, to the knowledge of any Loan Party, previously owned, operated or leased by or for any Loan Party is subject to any pending or, to the knowledge of any Loan Party, threatened, claim, order, agreement, notice of violation, notice of potential liability or is the subject of any pending or threatened proceeding or governmental investigation under or pursuant to Environmental Laws other than those that, in the aggregate, would not have a Material Adverse Effect.

(c) As of the date hereof, no Environmental Lien has attached to any property of any Loan Party and, to the knowledge of any Loan Party, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such property.

Section 4.17 Intellectual Property

(a) Each Loan Party owns or licenses or otherwise has the right to use all licenses, permits, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications, Internet domain names, franchises, authorizations and other intellectual property rights (including all Intellectual Property) that are necessary for the operations of their respective businesses, without infringement upon or conflict with the rights of any other Person with respect thereto, including all trade names associated with any private label brands of any Loan Party. To the knowledge of each Loan Party, no license, permit, patent, patent application, trademark, trademark application, service mark, trade name, copyright, copyright application, Internet domain name, franchise, authorization, other intellectual property right (including all Intellectual Property), slogan or other adver-

tising device, product, process, method, substance, part or component, or other material now employed, or now contemplated to be employed, by any Loan Party infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened in writing other than those that, in the aggregate, would not have a Material Adverse Effect.

Section 4.18 Title; Real Property

(a) Each Loan Party has good and marketable title to, or valid leasehold interests in, all Real Property and good title to all personal property, in each case that is purported to be owned or leased by it, including those reflected on the most recent Financial Statements delivered by the Loan Parties, and none of such properties and assets is subject to any Lien, except Liens permitted under *Section 7.2 (Liens, Etc.)*. Each Loan Party has received all deeds, assignments, waivers, consents, non-disturbance and recognition or similar agreements, bills of sale and other documents in respect of, and have duly effected all recordings, filings and other actions necessary to establish, protect and perfect, its right, title and interest in and to all such property other than those that, in the aggregate, would not have a Material Adverse Effect.

(b) No Loan Party owns or holds, or is obligated under or a party to, any lease, option, right of first refusal or other contractual right to purchase, acquire, sell, assign, dispose of or lease any Real Property of such Loan Party or any of its Subsidiaries.

(c) All Permits required to have been issued or appropriate to enable all Real Property of any Loan Party to be lawfully occupied and used for all of the purposes for which they are currently occupied and used have been lawfully issued and are in full force and effect, other than those that, in the aggregate, would not have a Material Adverse Effect.

(d) No Loan Party has received any notice, or has any knowledge, of any pending, threatened or contemplated condemnation proceeding affecting any Real Property of any Loan Party or any part thereof, except those that, in the aggregate, would not have a Material Adverse Effect.

Section 4.19 Secured, Super-Priority Obligations

(a) On and after the Effective Date, the provisions of the Loan Documents and the Final Order is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, legal, valid and perfected Liens on and security interests (having the priority provided for herein and in the Final Order) in all right, title and interest in the Collateral, enforceable against each Loan Party that owns an interest in such Collateral.

(b) Pursuant to subsections 364(c)(2) and (3) of the Bankruptcy Code and the Final Order, all amounts owing by the Loan Parties under the Facility will be secured by a first priority perfected Lien on the Collateral, subject only to (i) Existing Senior Liens and (ii) the Carve-Out.

(c) Pursuant to section 364(c) of the Bankruptcy Code and the Final Order, all obligations of the Loan Parties under this Agreement in respect thereof at all times will constitute allowed super-priority administrative expense claims

in each of the Cases having priority over all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, subject only to the Carve-Out.

(d) The Final Order and the transactions contemplated hereby and thereby, are in full force and effect and have not been vacated, reversed, modified, amended or stayed without the prior written consent of the Requisite Lenders.

ARTICLE V

REPORTING COVENANTS

Each of the Loan Parties agrees with the Lenders and the Administrative Agent to each of the following, as long as any Obligation or any Commitment remains outstanding and, in each case, unless the Requisite Lenders otherwise consent in writing:

Section 5.1 Financial Statements

The Loan Parties shall furnish to the Administrative Agent (with sufficient copies for each of the Lenders) each of the following:

(a) Within five Business Days after filing with the Bankruptcy Court, copies of the monthly operating reports filed by the Borrowers and the Co-Debtors in the Cases.

(b) *[Reserved]*.

(c) *[Reserved]*.

(d) *Compliance Certificate.* Within fifteen days after the end of each month, a certificate of a Responsible Officer of TSC (each, a "*Compliance Certificate*") stating that no Default of Event of Default has occurred and is continuing or, if a Default or an Event of Default has occurred and is continuing, stating the nature thereof and the action that TSC proposes to take with respect thereto.

(e) *Management Letters, Etc.* Within five Business Days after receipt thereof by any Loan Party, copies of each management letter, exception report or similar letter or report received by such Loan Party from its independent certified public accountants (including the Borrowers' Accountants).

(f) *[Reserved]*.

(g) *[Reserved]*.

Section 5.2 Budget Updates

The Initial Budget shall apply to the use of all proceeds of the Loans for the 3-month period beginning on or about the Effective Date, absent an amendment thereto that is approved by the Requisite Lenders. Any amended budget shall be prepared on a basis consistent with the Initial Budget and shall be in form and substance reasonably satisfactory to the Requisite Lenders.

Section 5.3 Default Notices

As soon as practicable, and in any event within two Business Days after a Responsible Officer of any Loan Party has actual knowledge of the existence of any Default, Event of Default or other event having had a Material Adverse Effect or having any reasonable likelihood of causing or resulting in a Material Adverse Change (other than as a result of the commencement of the Cases or as customarily caused by the filing thereof), such Loan Party shall give the Administrative Agent notice specifying the nature of such Default or Event of Default or other event, including the anticipated effect thereof, which notice, if given by telephone, shall be promptly confirmed in writing on the next Business Day.

Section 5.4 Certain Material Correspondence.

The Loan Parties shall provide the Lenders with copies of any material correspondence, reports, amendments or any other material information provided or received with respect to the FCC with respect to the permits, licenses and approvals required to operate the 1.4 GHz spectrum held at TerreStar 1.4 Holdings LLC, promptly after sending or receiving any of the foregoing.

Section 5.5 SEC Filings; Press Releases

Promptly after the sending or filing thereof, the Loan Parties shall send the Administrative Agent copies of (a) all reports that any Loan Party sends to its security holders generally, (b) all reports and registration statements that any Loan Party files with the Securities and Exchange Commission or any national or foreign securities exchange or the National Association of Securities Dealers, Inc., (c) all press releases and (d) all other statements concerning material changes or developments in the business of such Loan Party made available by any Loan Party to the public or any other creditor.

Section 5.6 Variance Reporting.

TSC shall provide to each of the Lenders, commencing from the two-week period ended July [__], 2012,[2] so as actually to be received on the fifth Business Day after the end of each such two-week period, a variance report (a "*Variance Report*") certified by a Responsible Officer of TSC, in substantially the form of *Exhibit G (Form of Variance Report*, setting forth (A) the Borrowers' actual cash receipts and the aggregate expenses and disbursements for such immediately preceding two-week period (provided, however, that the initial Variance Report provided by TSC shall set forth actual cash receipts and the aggregate operating expenses and disbursements for the period since the Effective Date), (B) the variance in dollar amounts of the Borrowers actual aggregate expenses and disbursements from those reflected for the corresponding period in the Budget over (i) the preceding two-week period and (ii) the period from the Effective Date through the end of the two-week period immediately preceding the date on which such Variance Report is required to be delivered and (C) a detailed explanation of all such variances.

Section 5.7 Tax Reporting

Promptly after any of the Loan Parties determines that it intends to treat the Loans and the related transactions contemplated thereby as a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4 of the Code, such Loan Party shall give the Administrative Agent written notice thereof and shall deliver to the Administrative Agent all IRS forms required in connection therewith.

Section 5.8 Bankruptcy Court Documents

The Loan Parties shall promptly deliver to the Administrative Agent, each of the Lenders and their respective counsels all material pleadings, motions and other documents filed on behalf of any of the Loan Parties with the Bankruptcy Court or provided by any of the Loan Parties to any statutory committee

[2] To be 4 weeks after the Effective Date.

appointed in the Cases or the U.S. Trustee.

Section 5.9 Other Information

The Loan Parties shall provide the Administrative Agent or any Lender with such other information respecting the business, properties, condition, financial or otherwise, or operations of the Loan Parties as the Administrative Agent or such Lender through the Administrative Agent may from time to time reasonably request.

ARTICLE VI

AFFIRMATIVE COVENANTS

Each of the Loan Parties agrees with the Lenders and the Administrative Agent to each of the following, as long as any Obligation or any Commitment remains outstanding and, in each case, unless the Requisite Lenders (and, with respect to Article IX, the Loan Parties) otherwise consent in writing:

Section 6.1 Preservation of Corporate Existence, Etc.

Each Loan Party shall preserve and maintain its legal existence, rights (charter and statutory) and franchises.

Section 6.2 Compliance with Laws, Etc.

Each Loan Party shall comply with all applicable Requirements of Law, Contractual Obligations and Permits, except where the failure so to comply would not, in the aggregate, have a Material Adverse Effect.

Section 6.3 Conduct of Business

Each Loan Party shall (a) conduct its business in the ordinary course and consistent with past practice and (b) use its reasonable efforts, in the ordinary course and consistent with past practice, to preserve the value of its assets, its business and the goodwill, and to preserve its contractual relationships and business relationships with its customers, advertisers, suppliers and others having business relations with any Loan Party or TerreStar 1.4 Holdings LLC, except in each case where the failure to comply with the covenants in each of *clauses (a)* and *(b)* above would not, in the aggregate, have a Material Adverse Effect.

Section 6.4 Payment of Taxes, Etc.

In accordance with the Bankruptcy Code and subject to any required approval by an applicable order of the Bankruptcy Court and without any further application to the Bankruptcy Court, each Loan Party shall pay and discharge before the same shall become delinquent, all lawful governmental claims, taxes, assessments, charges and levies arising after the Petition Date, except where contested in good faith, by proper proceedings and adequate reserves therefor have been established on the books of such Loan Party in conformity with GAAP.

Section 6.5 Maintenance of Insurance

Each Loan Party shall maintain or cause to be maintained insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Loan Party, and such other insurance as may be reasonably requested by the Requisite Lenders, and, in any event, all insurance required by any Collateral Documents.

Section 6.6 Access

Each Loan Party shall from time to time permit the Administrative Agent and the Lenders, or any agents or representatives thereof, within two Business Days after written notification of the same (except that during the continuance of an Event of Default, no such notice shall be required) to (a) examine and make copies of and abstracts from the records and books of account of each Loan Party, (b) visit the properties of each Loan Party, (c) discuss the affairs, finances and accounts of each Loan Party with any officer or director of any Loan Party and (d) communicate directly with any certified public accountants (including the Borrowers' Accountants). Each Loan Party shall authorize its certified public accountants (including the Borrowers' Accountants) to disclose to the Administrative Agent or any Lender any and all financial statements and other information of any kind, as the Administrative Agent or any Lender reasonably requests and that such accountants may have with respect to the business, financial condition, results of operations or other affairs of any Loan Party.

Section 6.7 Keeping of Books

Each Loan Party shall keep proper books of record and account.

Section 6.8 Maintenance of Properties, Etc.

Except as otherwise required by the Bankruptcy Code, each Loan Party shall maintain and preserve (a) in good working order and condition all of its properties necessary in the conduct of its business, (b) all rights, permits, licenses, approvals and privileges (including all Permits) used or useful or necessary in the conduct of its business and (c) all registered patents, trademarks, trade names, copyrights and service marks with respect to its business, except where failure to so maintain and preserve the items set forth in *clauses (a)*, *(b)* and *(c)* above would not, in the aggregate, have a Material Adverse Effect.

Section 6.9 Application of Proceeds

The Borrowers (and to the extent distributed to it by any Borrower, the Guarantor) shall use the proceeds of the Loans only as provided in *Section 4.12 (Use of Proceeds).*

Section 6.10 Environmental

Except as otherwise required by the Bankruptcy Code or by a final order of the Bankruptcy Court, each Loan Party shall comply in all material respects with Environmental Laws.

Section 6.11 Additional Collateral, Guaranties and Actions

To the extent not delivered to the Administrative Agent on or before the Effective Date (including in respect of after-acquired property), each Loan Party shall promptly do each of the following, unless otherwise agreed by the Administrative Agent:

(a) deliver to the Administrative Agent such duly executed supplements and amendments to this Agreement, as reasonably requested by the Requisite Lenders, in each case in form and substance reasonably satisfactory to the Requisite Lenders;

(b) take such other actions necessary or advisable to create, maintain or perfect the security interest required to be granted pursuant to this Agreement, including the filing of UCC financing statements in such jurisdictions as may be required by the Collateral Documents or by law or as may be reasonably requested by the Administrative Agent.

Section 6.12 Specified Account

The Borrowers shall deposit the proceeds of the Loans and all collections of the Loan Parties received by the Loan Parties after the Effective Date into the Specified Account. Prior to the receipt by the Borrowers of notice from the Agent pursuant to Section 8.2 (*Remedies*) hereunder, the Borrowers are entitled to use the funds in the Specified Account in accordance with the Section 4.12 (*Use of Proceeds*) hereof.

Section 6.13 Milestones and Plan Support

Subject to the availability of the Bankruptcy Court, the Loan Parties shall comply with the following milestones:

(a) On or prior to June 30, 2012, the Plan shall have been filed with the Bankruptcy Court;

(b) On or prior to [_____], 2012[3], the Bankruptcy Court shall have entered an order confirming the Plan; and

(c) On or prior to [_____], 2012[4], the Plan shall have become effective.

Section 6.14 Credit Bid

In connection with any sale of assets by any Loan Party, whether pursuant to Bankruptcy Code section 363 or pursuant to a chapter 11 plan or otherwise, the Loan Parties hereby agree that the Administrative Agent, at the direction of each of the Lenders, and the Prepetition Agent, at the direction of each of the Prepetition Lenders, each shall have the right to credit bid in connection with any such sale, subject to the terms of this Agreement and the Prepetition Credit Agreement, as applicable. In the absence of a credit bid by the Administrative Agent or the Prepetition Agent in connection with any such sale, each of the Lenders and the Prepetition Lenders, either individually or together with one or more other Lenders or Prepetition Lenders, shall have the right to credit bid.

Section 6.15 Bankruptcy Court Approval

The Loan Parties shall use all reasonable efforts to obtain the approval of the Bankruptcy Court of, and to satisfy the conditions precedent provided in, this Agreement and the other Loan Documents.

ARTICLE VII

NEGATIVE COVENANTS

Each of the Loan Parties agrees with the Lenders and the Administrative Agent to each of the following, as long as any Obligation or any Commitment remains outstanding and, in each case, unless the Requisite Lenders otherwise consent in writing:

Section 7.1 Indebtedness

No Loan Party shall directly or indirectly create, incur, solicit, assume or otherwise become or remain directly or indirectly liable with respect to any Indebtedness except for the following:

[3] This date will be the 4 month anniversary of Effective Date.

[4] This date will be the 6 month anniversary of Effective Date.

(a) the Obligations;

(b) Indebtedness specifically contemplated by and identified in the Budget;

(c) Indebtedness existing on the date of this Agreement and disclosed on *Schedule 7.1 (Existing Indebtedness*);

(d) Indebtedness owed to any person providing property, casualty or liability insurance to any Loan Party, pursuant to reimbursement or indemnification obligations to such person;

(e) [Reserved];

(f) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business; *provided* that such Indebtedness is extinguished within five (5) Business Days of its incurrence;

(g) Indebtedness in respect of netting services, overdraft protection and similar arrangements, in each case, in connection with cash management and deposit accounts incurred in the ordinary course of business;

(h) prepetition trade liabilities and intercompany liabilities the enforcement of which is stayed by virtue of the filing of the Cases;

(i) other Indebtedness of any Loan Party in an aggregate principal amount that at the time of, and after giving effect to, the incurrence thereof, would not exceed $50,000;

(j) intercompany Indebtedness among the Loan Parties; and

(k) all premium (if any), interest, fees, expenses, charges and additional or contingent interest on obligations described in paragraphs (a) through (j) above.

Section 7.2 Liens, Etc.

No Loan Party shall create or suffer to exist, any Lien upon or with respect to any of their respective properties or assets, whether now owned or hereafter acquired, or assign, any right to receive income or profits, except for the following:

(a) Liens created pursuant to the Loan Documents; and

(b) Liens existing on the date of this Agreement and disclosed on *Schedule 7.2 (Existing Liens)*, including Existing Senior Liens;

(c) Customary Permitted Liens on the assets of the Loan Parties;

(d) Liens created pursuant to Indebtedness permitted by *Section 7.1(i) (Indebtedness)*, subject to the Lien priorities set forth in the Final Order; and

(e) Liens pursuant to sections 546(b) and 362(b)(18) of the Bankruptcy Code.

Notwithstanding the foregoing, other than the Liens created pursuant to the Loan Documents, no Loan Party shall create or suffer to exist, any Lien upon or with respect to the Stock of TerreStar 1.4 Holdings LLC, whether now owned or hereafter acquired by such Loan Party.

Section 7.3 Investments

No Loan Party shall make or maintain, directly or indirectly, any Investment except for the following:

(a) Investments existing on the date of this Agreement and disclosed on *Schedule 7.3 (Existing Investments)*;

(b) Investments specifically contemplated by and identified in the Budget; and

(c) Intercompany Loans to the Co-Debtors, TerreStar Global Ltd. and TerreStar 1.4 Holdings LLC in an aggregate amount not to exceed $60,000 (or a higher amount reasonably approved by the Requisite Lenders) since the Effective Date; and

(d) Investments made by one Loan Party in the other Loan Party.

Notwithstanding the foregoing, (i) nothing in this *Section 7.3 (Investments)* shall prevent any Loan Party from maintaining any Investment in any TSN Debtor in existence on the date hereof and (ii) to the extent any Investment made by any TSN Debtor may be construed as an indirect Investment by any Loan Party, the limitations set forth in this *Section 7.3 (Investments)* shall not apply to such Investment.

Section 7.4 Sale of Assets

No Loan Party shall sell, convey, transfer, lease or otherwise dispose of, any of their respective assets or any interest therein (including the sale or factoring at maturity or collection of any accounts) to any Person, or permit or suffer any other Person to acquire any interest in any of their respective assets or issue or sell any shares of their Stock or any Stock Equivalents (any such disposition being an "*Asset Sale*"), except the sale or disposition of Cash Equivalents in the ordinary course of business and in accordance with the Budget.

The foregoing limitations are not intended to prevent any Loan Party from (a) rejecting unexpired leases or executory contracts pursuant to section 365 of the Bankruptcy Code in connection with the Cases or (b) engaging in a sale process of any of their assets (for the avoidance of doubt, the proceeds of any such sale shall be immediately used to repay all Obligations owing under this Agreement).

Section 7.5 Restricted Payments

No Loan Party shall directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Payment, except Restricted Payments by any Loan Party, directly or indirectly, to any other Loan Party, or cash payments made pro rata to all holders of TSC Series A Preferred Shares and TSC Series B Preferred

Shares upon the effective date of a chapter 11 plan for the Borrowers and the Co-Debtors.

Section 7.6 Prepayment and Cancellation of Indebtedness

(a) No Loan Party shall cancel any claim or Indebtedness owed to any of them other than the intercompany Indebtedness owned by one Borrower to the other Borrower.

(b) Other than the intercompany Indebtedness owed by one Loan Party to another Loan Party, no Loan Party shall prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness except as provided in the Budget; *provided*, *however*, that each Loan Party may prepay the Obligations in accordance with the terms of this Agreement.

Section 7.7 Restriction on Fundamental Changes

No Loan Party shall (a) (i) merge with any Person, (ii) consolidate with any Person, (iii) acquire all or substantially all of the Stock or Stock Equivalents of any Person or (iv) acquire all or substantially all of the assets of any Person or all or substantially all of the assets constituting the business of a division, branch or other unit operation of any Person, (b) enter into any joint venture or partnership with any Person or (c) acquire or create any Subsidiary.

Section 7.8 Change in Nature of Business

(a) No Loan Party shall make any material change in the nature or conduct of its business as carried on at the date hereof.

(b) None of the Loan Parties shall engage in any business or activity other than (i) holding shares in the Stock of its Subsidiaries, (ii) paying taxes, (iii) preparing reports to Governmental Authorities and to its shareholders, (iv) holding directors and shareholders' meetings, preparing corporate records and other corporate activities required to maintain its separate corporate structure and (v) activities related to a financial restructuring, recapitalization or sale of assets of the Borrowers and the Co-Debtors.

Section 7.9 Transactions with Affiliates

(a) No Loan Party shall, except (i) as disclosed on Schedule 7.9, (ii) transactions between the Borrowers, or (iii) intercompany loans to the Co-Debtors and TerreStar 1.4 Holdings LLC as permitted under Section 7.3 *(Investments)* hereof or (iv) as otherwise expressly permitted herein, do any of the following: (a) make any Investment in an Affiliate of the Borrowers, (b) transfer, sell, lease, assign or otherwise dispose of any asset to any Affiliate of the Borrowers, (c) merge into or consolidate with or purchase or acquire assets from any Affiliate of the Borrowers, (d) repay any Indebtedness to any Affiliate of the Borrowers or (e) enter into any other transaction directly or indirectly with or for the benefit of any Affiliate of the Borrowers (including guaranties and assumptions of obligations of any such Affiliate)

Section 7.10 Limitations on Restrictions on Subsidiary Distributions; No New Negative Pledge.

Except pursuant to the Loan Documents and any agreements governing purchase money Indebtedness or Capital Lease Obligations permitted by *Section 7.1 and Indebtedness set forth on Schedule 7.1 (Existing Indebtedness)*, no Loan Party shall (a) agree to enter into or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of such Loan Party to pay dividends or make any other distribution or transfer of funds or assets or make loans or advances to or other Investments in, or pay any Indebtedness owed to, any Loan Party or (b) enter into or suffer to exist or become effective any agreement prohibiting or limiting the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, to secure the Obligations, including any agreement requiring any other Indebtedness or Contractual Obligation to be equally and ratably secured with the Obligations.

Section 7.11 Modification of Constituent Documents and Material Agreements

No Loan Party shall change its capital structure (including in the terms of its outstanding Stock) or otherwise amend its Constituent Documents or material agreements or cause TerreStar 1.4 Holdings LLC to amend its Constituent Documents or material agreements, except for changes and amendments that do not adversely affect the rights and privileges of any Loan Party and do not adversely affect the interests of the Secured Parties under the Loan Documents or in the Collateral.

Section 7.12 Accounting Changes; Fiscal Year

No Loan Party shall change its fiscal year.

Section 7.13 Margin Regulations

No Loan Party shall use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock (within the meaning of Regulation U of the Federal Reserve Board) in contravention of Regulation U of the Federal Reserve Board.

Section 7.14 Operating Leases; Sale/Leasebacks

(a) No Loan Party shall become or remain liable as lessee or guarantor or other surety with respect to any operating lease, except as specifically contemplated by and identified in the Budget.

(b) No Loan Party shall enter into any sale and leaseback transaction.

Section 7.15 No Speculative Transactions

No Loan Party shall engage in any speculative transaction.

Section 7.16 Compliance with ERISA

No ERISA Affiliate shall cause or permit to occur, (a) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event that would have a Material Adverse Effect in the aggregate. No Loan Party shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

Section 7.17 Environmental

No Loan Party shall allow a Release of any Contaminant in violation of any Environmental Law; *provided, however*, that the Loan Parties shall not be deemed in violation of this *Section 7.17* if all Environmental Liabilities and Costs incurred or reasonably expected to be incurred by the Loan Parties as the consequence

of all such Releases would not result in a Material Adverse Effect.

Section 7.18 Material Contractual Obligations and Material Settlements

No Loan Party shall enter into any material Contractual Obligations or any material settlements without prior consultation with the Requisite Lenders. The Loan Parties shall consult with the Requisite Lenders prior to filing any motion or application with the Bankruptcy Court seeking approval of any such Contractual Obligation, or authorization to assume any Contractual Obligation.

Section 7.19 Chapter 11 Claims

No Loan Party shall incur, create, assume, suffer to exist or permit any administrative expense, unsecured claim, secured claim, or other super-priority claim or lien which is pari passu with or senior to the claims of the Secured Parties against the Loan Parties hereunder, or apply to the Bankruptcy Court for authority to do so, except for the Carve-Out.

Section 7.20 Incurrence of Postpetition Indebtedness by TSC Specified Subsidiaries

Each Loan Party shall not provide, and shall not take any action to cause any TSC Specified Subsidiary that is not a Loan Party to provide, a guaranty (or otherwise incur any liability) in connection with the restructuring or bankruptcy of any TSN Debtor or any Affiliate of any TSN Debtor (other than the Loan Parties).

Section 7.21 The Order

No Loan Party shall make or seek any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Final Order without the prior written consent of the Requisite Lenders, to be given or withheld in their sole discretion.

Section 7.22 Issuance of Equity Securities

On or after the Effective Date, no Loan Party shall, whether individually or with any other person or entity, cause TerreStar 1.4 Holdings LLC to issue any equity securities.

Section 7.23 Expenses and Disbursements

The Borrowers' actual aggregate expenses and disbursements (other than the amounts on the line item titled "Professional fees"), as set forth in any Variance Reports, (i) for any two-week period shall not exceed one hundred ten percent (110%) of the aggregate amount of such expenses and disbursements (other than the amounts on the line item titled "Professional fees") set forth in the Budget for such period and (ii) for the period from the Effective Date through the end of the two-week period immediately preceding the date on which such Variance Report is required to be delivered, shall not exceed one hundred five percent (105%) of the aggregate amount of such expenses and disbursements (other than the amounts on the line item titled "Professional fees") set forth in the Budget for such period.

Section 7.24 Professional Fees

The Debtors actual aggregate expenses and disbursements constituting Professional Fees paid during any four-week period, as set forth in any Variance Reports, shall not exceed one hundred ten percent (110%) of the aggregate amount of such expenses and disbursements set forth in the Budget for such period; provided, however, that to the extent that the Court permits disbursement of holdbacks on an earlier schedule than currently budgeted, such award shall not cause an Event of Default and the Budget shall be adjusted accordingly; provided further that to the extent the aggregate expenses and disbursements constituting

Professional fees set forth in the Budget for any four-week period exceeds the actual aggregate amount of such expenses and disbursements paid during such period, such excess shall be automatically added to the budgeted amounts of such expenses and disbursements set forth in the Budget for the succeeding periods.

Section 7.25 Plan

No Loan Party or TSC Specified Subsidiary shall seek to confirm a chapter 11 plan without the consent of the Requisite Lenders unless such plan provides for either (i) payment of all of the Obligations in full in cash on the effective date of such plan or (ii) conversion of all of the Obligations into amounts outstanding under an exit financing facility, the terms and conditions of which are acceptable to each of the Lenders in their sole discretion.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1 Events of Default

Each of the following events shall be an Event of Default (each an "*Event of Default*"):

(a) the Borrowers shall fail to pay any principal of any Loan on the date such payment becomes due and payable; or

(b) the Borrowers shall fail to pay any interest on any Loan, any fee under any of the Loan Documents or any other Obligation (other than one referred to in *clause (a)* above) and such non-payment continues for a period of three Business Days after the due date therefor; or

(c) any representation or warranty made or deemed made by any Loan Party in any Loan Document or by any Loan Party (or any of its officers) in connection with any Loan Document shall prove to have been incorrect in any material respect when made or deemed made; or

(d) any Loan Party shall fail to perform or observe (i) any term, covenant or agreement contained in Section *5.3 (Default Notices), 6.1 (Preservation of Corporate Existence, Etc.), 6.9 (Application of Proceeds), 6.13 (Milestone),* or *Article VII (Negative Covenants)* or (ii) any term, covenant or agreement contained in *Section 5.1 (Financial Statements), 6.6 (Access),* or *6.11 (Additional Collateral and Guaranties)* if such failure under this clause (ii) shall remain unremedied for five (5) days after the earlier of (A) the date on which a Responsible Officer of any Loan Party becomes aware of such failure and (B) the date on which written notice thereof shall have been given to the Loan Parties by the Administrative Agent or any Lender, or (iii) any other term, covenant or agreement contained in this Agreement or in any other Loan Document if such failure under this clause (iii) shall remain unremedied for ten (10) days after the earlier of (A) the date on which a Responsible Officer of any Loan Party becomes aware of such failure and (B) the date on which written notice thereof shall have been given to the Loan Parties by the Administrative Agent or any Lender; *provided, however* that any failure to perform any term, covenant or agreement contained in *Section 6.13* (*Milestones*), to the extent such failure is caused solely by the action or inaction of any Lender, shall not constitute an Event of Default; or

(e) (i) any Borrower shall fail to make any payment on any postpetition Indebtedness of such Borrower (other than the Obligations) or any

Guaranty Obligation in respect of postpetition Indebtedness of any other Person, and, in each case, such failure relates to postpetition Indebtedness having a principal amount of $75,000 or more, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such postpetition Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such postpetition Indebtedness or (iii) any such postpetition Indebtedness shall become or be declared to be due and payable, or be required to be prepaid or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(f) the Loan Documents and Final Order shall, for any reason, cease to create or maintain a valid Lien on any of the Collateral purported to be covered thereby or such Lien shall cease to be a perfected Lien having the priority provided herein pursuant to section 364 of the Bankruptcy Code against each Loan Party, or any Loan Party shall so allege in any pleading filed in any court or any material provision of any Loan Document shall, for any reason, cease to be valid and binding on each Loan Party party thereto or any Loan Party shall so state in writing; or

(g) any provision of any Loan Document shall for any reason (other than pursuant to the terms thereof) cease to be valid and binding on or enforceable against any Loan Party that is party to such Loan Document, or any Loan Party shall so state in writing; or

(h) one or more judgments or orders (or other similar process) involving, in the case of money judgments, an aggregate amount whose Dollar Equivalent exceeds $50,000, to the extent not covered by insurance, shall be rendered against one or more Loan Parties and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of twenty (20) consecutive days; or

(i) an ERISA Event (other than the Cases) shall occur and the Dollar Equivalent of the amount of all liabilities and deficiencies resulting therefrom, whether or not assessed, exceeds $50,000 in the aggregate; or

(j) there shall occur any Change of Control; or

(k) there shall occur a Material Adverse Change or any event or circumstances that would have a Material Adverse Effect; or

(l) any Loan Party shall have entered into one or more consent or settlement decrees or agreements or similar arrangements with a Governmental Authority or one or more judgments, orders, decrees or similar actions shall have been entered against any Loan Party based on or arising from the violation of or pursuant to any Environmental Law, or the generation, storage, transportation, treatment, disposal or Release of any Contaminant and, in connection with all the foregoing, any Loan Party is likely to incur Environmental Liabilities and Costs whose Dollar Equivalent exceeds $50,000; or

(m) any of the Cases shall be dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of the Cases), suspended or converted to a case under chapter 7 of the Bankruptcy Code, or any Loan Party shall file any pleading requesting any such relief; or an application shall be filed by any

Loan Party for the approval of, or there shall arise, (i) any other Claim having priority senior to or *pari passu* with the claims of the Administrative Agent and the Lenders under the Loan Documents or any other claim having priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except as expressly provided herein; or

(n) without the reasonable consent of the Requisite Lenders, any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition Claim, (ii) granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to any holder or holders of any security interest to permit foreclosure on any assets, (iii) approving any settlement or other stipulation with any creditor of any Loan Party, other than the Administrative Agent, each of the Lenders (acting together), the Prepetition Agent and each of the Prepetition Lenders (acting together), or otherwise providing for payments as adequate protection or otherwise to such creditor (excluding payments in respect of allowed post-petition administrative expenses) or (iv) approving payment of or granting any adequate protection with respect to pre-petition Indebtedness; *provided* that the Loan Parties may take such actions if the aggregate value of all such property and payments (including the value of any consideration given by any Loan Party in connection with any such settlement) does not exceed in the aggregate $150,000; or

(o) (i) the Final Order shall cease to be in full force and effect, or (ii) any Loan Party shall fail to comply with the terms of the Final Order in any material respect, or (iii) the Final Order shall be amended, supplemented, stayed, reversed, vacated or otherwise modified (or any of the Loan Parties shall apply for authority to do so) without the reasonable written consent of the Requisite Lenders; or

(p) any Loan Party shall take any action in contravention of any provision of any of the Certificates of Designations; *provided* that the failure of the Borrowers to redeem any series of preferred stock in accordance with the terms of the provisions of the applicable Certificate of Designations shall not constitute an Event of Default; or

(q) the Bankruptcy Court shall enter an order appointing a trustee, responsible officer or an examiner with powers beyond the duty to investigate and report, as set forth in section 1106(a)(3) and (4) of the Bankruptcy Code, in any of the Cases; or

(r) any costs or expenses of administration that have been or may be incurred in any of the Cases at any time are charged against the Lenders, the Lenders' claims, or the Collateral, pursuant to sections 105, 506(c) or 522 of the Bankruptcy Code, or otherwise, without the prior written consent of each of the Lenders; or

(s) (i) any Loan Party shall file an application, motion or other document to authorize, support or approve any of the matters described in subsections (m) through (r) above, or (ii) any other Person shall file an application, motion or other document to authorize, support, allege or approve any of the matters described in subsections (m) through (r) above and any Loan Party shall fail to contest such application, motion or other document in a timely manner; or

(t) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of TerreStar 1.4 Holdings LLC under chapter 11 of the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for TerreStar 1.4 Holdings LLC or (iii) the winding-up or liquidation of TerreStar 1.4 Holdings LLC; and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(u) TerreStar 1.4 Holdings LLC shall (i) voluntarily commence any proceeding or file any petition seeking relief under chapter 11 of the Bankruptcy Code, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely, diligent and appropriate manner, any proceeding or the filing of any petition described in paragraph (t) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for TerreStar 1.4 Holdings LLC, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) become unable or admit in writing its inability or fail generally to pay its debts as they become due; or

(v) the loss or revocation of any license, authorization, approval, or permit granted by the Federal Communications Commission or any successor entity, pursuant to the Communications Act of 1934, as amended, modified or supplemented from time to time, to TerreStar 1.4 Holdings LLC material to TerreStar 1.4 Holdings LLC's lawful operation of the 1.4 GHz spectrum; or

(w) Eugene I. Davis shall (i) cease to be the chief restructuring officer of any Loan Party, TSC Specified Subsidiary or TerreStar 1.4 Holdings LLC and (ii) a replacement chief restructuring officer reasonably acceptable to the Requisite Lenders shall not be appointed within 30 days after such cessation; or

(x) the Bankruptcy Court shall (i) terminate the exclusive right of the Loan Parties to file or solicit votes on a chapter 11 plan of any of the Loan Parties; *provided, however*, for the avoidance of doubt, the statutory termination of the Borrowers' exclusive right of the Borrowers to file or solicit votes on a chapter 11 plan of any of the Borrowers shall not be considered an Event of Default, (ii) approve any disclosure statement with respect to any chapter 11 plan other than the Plan or (iii) enter an order confirming any chapter 11 plan other than the Plan; or

(y) any super-priority administrative expense claims pari passu with or senior to those of the Administrative Agent and the Lenders shall be granted by any Loan Party or allowed by the Bankruptcy Court against any Loan Party (or any Loan Party shall seek any such grant or allowance); or

(z) any Loan Party shall (i) take any action, whether individually or with any other person or entity, to cause or encourage TerreStar 1.4 Holdings LLC to fail to comply with each term, covenant and agreement of *Article VI (Affirmative Covenants)* and *Article VII (Negative Covenants)* as if it were a Loan Party and (ii) fail to cause TerreStar 1.4 Holdings LLC to comply with such terms, covenants and agreements as if it were a Loan Party.

Section 8.2 Remedies

During the continuance of any Event of Default, without further order of, application to, or action by, the Bankruptcy Court, the Administrative Agent (a) may, and, at the request of the Requisite Lenders, shall, by five (5) Business Days written notice to the Loan Parties declare that all or any portion of the Commitments be terminated, whereupon the obligation of each Lender to make any Loan shall immediately terminate and (b) may and, at the request of the Requisite Lenders, shall, by five (5) Business Days written notice to the Loan Parties, declare the Loans, all interest thereon and all other amounts and Obligations payable under this Agreement to be forthwith due and payable, whereupon the Loans, all such interest and all such amounts and Obligations shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Loan Parties. In addition subject solely to any requirement of the giving of notice, if any, by the terms of the Final Order, the automatic stay provided in section 362 of the Bankruptcy Code shall be deemed automatically vacated without further action or order of the Bankruptcy Court and the Administrative Agent and the Lenders shall be entitled to exercise all of their respective rights and remedies under the Loan Documents, including, without limitation, all rights and remedies with respect to the Collateral.

***Section 8.3* [Reserved]**

ARTICLE IX

PLAN SUPPORT

Section 9.1 Agreement to Support Plan

Each of the Lenders (severally and not jointly) agrees to do the following:

a. (i) so long as its vote has been properly solicited pursuant to sections 1125 and 1126 of the Bankruptcy Code, timely vote all claims and interests, now or hereafter owned by such Lenders, to accept the Plan in accordance with the applicable procedures set forth in the Plan solicitation materials, and timely return a duly executed ballot in connection therewith; (ii) support approval and confirmation of the Plan; and (iii) not make an election, if applicable, to "opt-out" of any third party releases contained in the Plan;

b. not withdraw or revoke its tender, consent or vote with respect to the Plan, the Disclosure Statement and the other Definitive Documents; and

c. not (i) oppose or object to the Plan, the Disclosure Statement or other Definitive Documents or the solicitation or consummation of the Plan and the transactions contemplated by the Definitive Documents, whether directly or indirectly, (ii) join in or support any objection to the Plan, Disclosure Statement or other Definitive Documents or to the solicitation of the Plan, (iii) initiate any legal proceedings that are inconsistent with or that would delay, prevent, frustrate or impede the approval, confirmation or consummation of the Disclosure Statement, the Plan or other Definitive Documents or the transactions outlined therein or in this Agreement, or otherwise commence any proceedings to oppose the Plan, the Disclosure Statement or any of the other Definitive Documents, including, but not limited to, any motion to appoint a trustee, conservator, receiver or examiner for any of the Borrowers or the Co-Debtors, to dismiss any of the Cases or to convert any of the Cases to cases under Chapter 7 of the Bankruptcy Code; (iv) vote for, consent to, support or participate in the formulation of any other restructuring or settlement of the Borrowers' or Co-Debtors' claims and interests, any other transaction involving the Borrowers or the Co-Debtors, any of their affiliates or their respective assets, any of their respective stock, or any plan of reorganization (with the exception of the Plan) or liquidation under applicable bankruptcy or insolvency laws, whether domestic or foreign, in respect of the Borrowers or the Co-Debtors or their respective affiliates; (v) directly or indirectly seek, solicit, support, formulate, entertain or encourage discussions, or enter into any agreements relating to, any restructuring, plan of reorganization, proposal or offer of

dissolution, winding up, liquidation, reorganization, merger, or restructuring of the Borrowers or the Co-Debtors or their respective affiliates (or any of their assets or stock) other than the Plan (any such plan or other action as described in clauses (iv) and (v) immediately above, an "Alternative Plan"); (vi) engage in or otherwise participate in any negotiations regarding any Alternative Plan, enter into any letter of intent, memorandum of understanding, agreement in principle or other agreement relating to any Alternative Plan; (vii) solicit, encourage, or direct any Person, including the Administrative Agent, to undertake any action set forth in this Article IX and, if the Administrative Agent or the counsel or advisors to the Administrative Agent takes or threatens to take any such action, to promptly take all commercially reasonable efforts to direct the Administrative Agent, or cause the Administrative Agent or the counsel or advisors to the Administrative Agent to be directed, not to take such action; or (viii) permit any of its, or its Affiliates, officers, directors, managers, employees, partners, representatives and agents that it controls to undertake any action set forth in this Article IX; provided that: (A) no Lender shall be required to take any action or give any direction if doing so would require such Party to provide an indemnity to the Administrative Agent in connection therewith and (B) nothing in this Article IX shall require any Lender to exercise, or prohibit any Lender from exercising, any right (including any right to grant or withhold consent) or remedy provided for under this Agreement. For the avoidance of doubt, nothing in this Section 9.1 or otherwise shall (x) prohibit any Lender from discussing any Alternative Plan with any other Lender or any Affiliate or Approved Fund of any Lender or (y) require any Lender to support approval of any sale, conveyance, transfer, lease or other disposition of any asset of any Loan Party, any TSC Specified Subsidiary or TerreStar 1.4 Holdings LLC or prohibit any Lender from objecting to any such transaction.

Section 9.2 Limitations on Transfers of Claims.

Each Lender agrees that it shall not (a) sell, transfer, assign, pledge, convey, hypothecate, grant a participation interest in, or otherwise dispose of, directly or indirectly, its right, title, or interest in respect of any of such Lender's interest in its applicable claim(s) against, and interests(s) in, the Borrowers or the Co-Debtors in whole or in part (including any voting rights associated with such claims or interests), or (b) grant any proxies, deposit any of such Lender's interests in the applicable claim(s) and interest(s) into a voting trust, or enter into a voting agreement with respect to any such claim or interest (collectively, the actions described in clauses (a) and (b), a "*Transfer*"), unless such Transfer is to another Lender or any other entity that first agrees in an enforceable writing to be bound by the terms of this Article IX by executing and delivering to the Borrowers a joinder, substantially in the form attached hereto as *Exhibit K* or such alternative form agreed to by the Borrowers. Upon compliance with the foregoing, the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Article IX of this Agreement to the extent of such transferred rights and obligations. Any Transfer made in violation of this Agreement shall be deemed null and void and of no force or effect, regardless of any prior notice provided to the Borrowers or the Co-Debtors, and shall not create any obligation or liability of the Borrowers or the Co-Debtors to the purported transferee (it being understood that the putative transferor shall continue to be bound by the terms and conditions set forth in this Agreement).

Section 9.3 Further Acquisition of Claims

Nothing herein shall preclude any Lender or its affiliates from acquiring additional claims against, and/or interests in, the Borrowers or the Co-Debtors. Any such additional claims and/or interests shall automatically be subject to the terms of this Article IX. If at any time requested by the Borrowers, each Lender shall promptly (and, in no event later than two (2) Business Days after such request) inform the Borrower of the aggregate principal amount of claims against, and/or interests in, the Borrowers and the Co-Debtors for which, as of the date of such request, it is the legal owner, beneficial owner and/or investment advisor or manager for the legal or beneficial owner.

Section 9.4 Specific Performance

The Borrowers, Guarantor and the Lenders agree that money damages would be an insufficient remedy for any breach of *Section 9.1* by any Lender and the Borrowers and Co-Debtors shall be entitled to specific

performance and injunctive or other equitable relief as a remedy for any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Lender to comply promptly with any of its obligations hereunder; provided, that the Borrowers and Guarantor agrees to waive any requirement for the securing or posting of a bond in connection with such remedy.

ARTICLE X

SECURITY

Section 10.1 Security

To induce the Lenders to make the Loans, each of the Loan Parties hereby grants to the Administrative Agent, for itself and for the ratable benefit of the Secured Parties, as security for the full and prompt payment when due (whether at stated maturity, by acceleration or otherwise) of the Obligations, a continuing first priority (subject to Liens permitted under *Section 7.2)* Lien and security interest (subject only to (i) Existing Senior Liens and (ii) the Carve-Out) in and to all the respective Collateral of the Loan Parties. For purposes of this Agreement, all of the following property now owned or at any time hereafter acquired by the Loan Parties, or in which the Loan Parties now have or at any time in the future may acquire any right, title or interests, wherever located, is collectively referred to as the "*Collateral*":

(a) all of the Loan Parties' right, title and interest in and to (but not any of the obligations, liabilities or indemnifications of the Loan Parties under) any tangible, intangible, real, personal or mixed assets, including, without limitation, Accounts, Inventory, Equipment, contract rights, Investment Property, Instruments, Chattel Paper, Documents, Supporting Obligations and Letter of Credit Rights, General Intangibles, Payment Intangibles, all money, cash, cash equivalents, securities and other property, Specified Bankruptcy Recoveries, Deposit Accounts, Securities Accounts and Commodities Accounts, and all other assets and properties (in each case, as defined in the applicable UCC); provided that no Loan Party shall be required to provide as security shares constituting more than 66% of the Stock of any Excluded Foreign Subsidiary; and

(b) all Proceeds of the foregoing.

Section 10.2 Perfection of Security Interest

(a) Upon execution and the Loan Parties obtaining rights in the Collateral, this Agreement and the Final Order, as applicable, create a valid and continuing security interest (as defined in the applicable UCC) in and lien upon the Collateral in favor of the Administrative Agent, on behalf of the Secured Parties, on the terms set forth in the Final Order, as applicable.

(b) [Reserved]

(c) Other than the security interest granted to the Administrative Agent, on behalf of the Secured Parties, pursuant to this Agreement, or otherwise permitted under *Section 7.2*) none of the Loan Parties has pledged, assigned, sold, granted a security interest in or otherwise conveyed any of the Collateral. None of the Loan Parties has authorized the filing of and is aware of any financing statements against the Loan Parties that include a description of collateral covering the Collateral other than any financing statement relating to the security interest granted to the Lender hereunder.

(d) Notwithstanding *clause (a)* above, or any failure on the part of any Loan Party or the Administrative Agent to take any of the actions set forth in such subsections, the Liens and security interests granted herein shall be deemed valid, enforceable and perfected by entry of the Final Order, as applicable. No financing statement, notice of lien, mortgage, deed of trust or similar instrument in any jurisdiction or filing office need be filed or any other action taken in order to validate and perfect the Liens and security interests granted by or pursuant to this Agreement or the Final Order.

Section 10.3 Covenants

(a) The Loan Parties shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in *Section 10.1 (Security)* and *Section 10.2 (Perfection of Security Interest)* and shall defend such security interest and such priority against the claims and demands of all Persons.

(b) The Loan Parties shall furnish to the Administrative Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Lenders may reasonably request, all in reasonable detail and in form and substance reasonably satisfactory to the Requisite Lenders.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of the Loan Parties, such Loan Parties shall promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further action as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including the filing of any financing or continuation statement under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interest created hereby.

(d) The Loan Parties shall (i) except for the security interest created by this Agreement, not create or suffer to exist any Lien upon or with respect to any Collateral, except Liens permitted under *Section 7.2 (Liens, Etc.)* of this Agreement, (ii) not use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement, any other Loan Document, any Requirement of Law or any policy of insurance covering the Collateral, (iii) not sell, transfer or assign (by operation of law or otherwise) any Collateral except as permitted under this Agreement, (iv) not enter into any agreement or undertaking restricting the right or ability of the Loan Parties or the Administrative Agent to sell, assign or transfer any Collateral if such restriction would have a Material Adverse Effect and (v) promptly notify the Administrative Agent of its entry into any agreement or assumption of undertaking that restricts the ability to sell, assign or transfer any Collateral regardless of whether or not it has a Material Adverse Effect.

Section 10.4 UCC and Other Remedies

During the continuance of an Event of Default, subject only to any required notice provided in the Final Order, the Administrative Agent may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the UCC or any other applicable law. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by

law referred to below) to or upon the Loan Parties or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon any Collateral, and may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver any Collateral (or contract to do any of the foregoing), in public or private sale or sales, at any exchange, broker's board or office of the Administrative Agent or any Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent shall have the right upon any such public sale or sales, and, to the extent permitted by the UCC and other applicable law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption of any Loan Party, which right or equity is hereby waived and released. Each of the Loan Parties further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places that the Administrative Agent shall reasonably select, whether at the Loan Parties' premises or elsewhere. The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this *Section 10.4*, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any Collateral or in any way relating to the Collateral or the rights of the Administrative Agent and any other Secured Party hereunder, including reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in such order as this Agreement shall prescribe, and only after such application and after the payment by the Administrative Agent of any other amount required by any provision of law, shall the Administrative Agent be required to account for the surplus, if any, to the Loan Parties. To the extent permitted by applicable law, the Loan Parties waive all claims, damages and demands it may acquire against the Administrative Agent or any other Secured Party arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

Section 10.5 Deficiency

The Loan Parties shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the Obligations and the fees and disbursements of any counsel employed by the Administrative Agent or any other Secured Party to collect such deficiency.

Section 10.6 Performance by Agent of the Loan Parties' Obligations

If any of the Loan Parties fails to perform or comply with any of its agreements contained in this *Article X* and the Administrative Agent, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of the Administrative Agent incurred in connection with such performance or compliance, together with interest thereon at the rate then in effect in respect of the Loan, shall be payable by the Loan Parties to the Administrative Agent on demand and shall constitute Obligations secured by the Collateral. Performance of the Loan Parties' obligations as permitted under this *Section 10.6* shall in no way constitute a violation of the automatic stay provided by section 362 of the Bankruptcy Code and each of the Loan Parties hereby waives applicability thereof. Moreover, the Administrative Agent shall in no way be responsible for the payment of any costs incurred in connection with preserving or disposing of Collateral pursuant to section 506(c) of the Bankruptcy Code and the Collateral may not be charged for the incurrence of any such cost.

Section 10.7 Limitation on Agent's Duty in Respect of Collateral

Neither the Administrative Agent nor any Lender shall have any duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto, except that the Administrative Agent shall, with respect to the Collateral in its possession or under its control, deal with such Collateral in the same manner as the Administrative Agent deals with similar property for its own account. Upon request of TSC, the Administrative Agent shall account for any moneys received by it in

respect of any foreclosure on or disposition of the Collateral of the Loan Parties.

Section 10.8 Administrative Agent's Appointment as Attorney-in-Fact

(a) Each of the Loan Parties hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Loan Party and in the name of such Loan Party or in its own name, for the purpose of carrying out the terms of this Agreement, to take any appropriate action and to execute any document or instrument that may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each of the Loan Parties hereby gives the Administrative Agent the power and right, on behalf of the Loan Party, without notice to or assent by the Loan Parties, to do any of the following:

(i) in the name of the Loan Parties or its own name, or otherwise, take possession of and indorse and collect any check, draft, note, acceptance or other instrument for the payment of moneys due under any Account or General Intangible or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any such moneys due under any Account or General Intangible or with respect to any other Collateral whenever payable;

(ii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repair or pay any insurance called for by the terms of this Agreement (including all or any part of the premiums therefor and the costs thereof);

(iii) execute, in connection with any sale provided for in *Section 10.4 (UCC and Other Remedies)*, any endorsement, assignment or other instrument of conveyance or transfer with respect to the Collateral; and

(iv) (A) direct any party liable for any payment under any Collateral to make payment of any moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct, (B) ask or demand for, collect, and receive payment of and receipt for, any moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral, (C) sign and indorse any invoice, freight or express bill, bill of lading, storage or warehouse receipt, draft against debtors, assignment, verification, notice and other document in connection with any Collateral, (D) commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect any Collateral and to enforce any other right in respect of any Collateral, (E) defend any suit, action or proceeding brought against the Loan Parties with respect to any Collateral, (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate and (G) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and the Loan Parties' expense, at any time, or from time to time, all acts and things that the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Loan Parties might do.

Anything in this *clause (a)* to the contrary notwithstanding, the Administrative Agent agrees that it shall not, subject to any requirement of notice provided in the Final Order, exercise any right under the power of attorney provided for in this *clause (a)* unless an Event of Default shall be continuing.

(b) If any of the Loan Parties fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this *Section 10.8*, together with interest thereon at a rate per annum equal to the rate per annum at which interest would then be payable on past due Loans under this Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the Loan Parties, shall be payable by the Loan Parties to the Administrative Agent on demand.

(d) Each of the Loan Parties hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released. Exercise by the Administrative Agent of the powers granted hereunder is not a violation of the automatic stay provided by section 362 of the Bankruptcy Code and the Loan Parties waive applicability thereof.

(e) All Obligations shall constitute, in accordance with section 364(c)(1) of the Bankruptcy Code, claims against the Loan Parties in their Cases which are administrative expense claims having priority over any all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code.

Section 10.9 Authorization of Financing Statements

Each of the Loan Parties authorizes the Administrative Agent and its Affiliates, counsel and other representatives, at any time and from time to time, to file or record financing statements, amendments to financing statements, and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Administrative Agent reasonably determines appropriate to perfect the security interests of the Administrative Agent under this Agreement, and such financing statements and amendments may describe the Collateral covered thereby. Each of the Loan Parties hereby also authorizes the Administrative Agent and its Affiliates, counsel and other representatives, at any time and from time to time, to file continuation statements with respect to previously filed financing statements. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

Section 10.10 Modifications

(a) The Liens, lien priority, administrative priorities and other rights and remedies granted to the Administrative Agent for the benefit of the Lenders pursuant to this Agreement and/or the Final Order (specifically, including, but not limited to, the existence, perfection and priority of the Liens provided herein and therein and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by any of the Loan Parties (pursuant to section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(i) except for the Carve-Out, no costs or expenses of administration which have been or may be incurred in any of the Cases or any conversion of the same or in any other proceedings related the-

reto, and no priority claims, are or will be prior to or on a parity with any claim of the Administrative Agent or the Lenders against the Loan Parties in respect of any Obligation;

(ii) the Liens and security interests granted herein shall constitute valid and perfected first priority liens and security interests (subject only to (i) valid, perfected, nonavoidable and enforceable Liens existing as of the Petition Date, and (ii) the Carve-Out), and shall be prior to all other liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever; and

(iii) the Liens and security interests granted hereunder shall continue valid and perfected without the necessity that financing statements be filed or that any other action be taken under applicable nonbankruptcy law.

(b) Notwithstanding any failure on the part of any Loan Party or the Administrative Agent or the Lenders to take any action to perfect, maintain, protect or enforce the Liens and security interests in the Collateral granted hereunder and the Final Order shall automatically, and without further action by any Person, perfect such liens and security interests against the Collateral.

(c) In the event of any inconsistency between the terms of this Agreement and the terms of the Final Order, the terms of the Final Order shall govern.

ARTICLE XI

GUARANTY

Section 11.1 The Guaranty

(a) To induce the Lenders to make the Loans, the Guarantor hereby absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the full and punctual payment when due and in the currency due, whether at stated maturity or earlier, by reason of acceleration, mandatory prepayment or otherwise in accordance herewith or any other Loan Document, of all the Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, whether or not recovery may be or hereafter may become barred by any statute of limitations, whether or not enforceable as against the Borrowers, whether now or hereafter existing, and whether due or to become due, including principal, interest (including interest at the contract rate applicable upon default accrued or accruing after the Petition Date, or any applicable provisions of comparable state or foreign law, whether or not such interest is an allowed claim in such proceeding), fees and costs of collection. This guaranty constitutes a guaranty of payment and not of collection.

(b) The Guarantor further agrees that, if (i) any payment made by any Loan Party or any other Person and applied to the Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or (ii) the proceeds of Collateral are required to be returned by any Secured Party to any Loan Party, its estate, trustee, receiver or any other party, including the Guarantor, under any bankruptcy law, equitable cause or any other Requirement of Law, then, to the extent of such payment or repayment, the Guarantor's liability hereunder shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, this guaranty shall have been cancelled or surrendered, this guaranty shall be

reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of the Guarantor in respect of the amount of such payment.

Section 11.2 Limitation of Guaranty

Any term or provision of this guaranty or any other Loan Document to the contrary notwithstanding, the maximum aggregate amount of the Obligations for which the Guarantor shall be liable shall not exceed the maximum amount for which the Guarantor can be liable without rendering this guaranty or any other Loan Document, as it relates to the Guarantor, subject to avoidance under applicable law relating to fraudulent conveyance or fraudulent transfer (including Section 548 of the Bankruptcy Code or any applicable provisions of comparable state law) (collectively, "*Fraudulent Transfer Laws*"), in each case after giving effect (a) to all other liabilities of the Guarantor, contingent or otherwise, that are relevant under such Fraudulent Transfer Laws (specifically excluding, however, any liabilities of the Guarantor in respect of intercompany Indebtedness to the Borrowers to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by the Guarantor hereunder) and (b) to the value as assets of the Guarantor (as determined under the applicable provisions of such Fraudulent Transfer Laws) of any rights to subrogation, contribution, reimbursement, indemnity or similar rights held by the Guarantor pursuant to (i) applicable Requirements of Law, (ii) *Section 11.3 (Contribution)* or (iii) any other Contractual Obligations providing for an equitable allocation among the Guarantor and other Subsidiaries or Affiliates of any Loan Party of obligations arising under this guaranty or other guaranties of the Obligations by such parties.

Section 11.3 Contribution

To the extent that the Guarantor shall be required hereunder to pay a portion of the Obligations exceeding the greater of (a) the amount of the economic benefit actually received by the Guarantor from the Loans and the other financial accommodations provided to the Borrowers under the Loan Documents and (b) the amount the Guarantor would otherwise have paid if the Guarantor had paid the aggregate amount of the Obligations (excluding the amount thereof repaid by the Borrowers) in the same proportion as the Guarantor's net worth at the date enforcement is sought hereunder bears to the aggregate net worth of all the Guarantors at the date enforcement is sought hereunder, then the Guarantor shall be reimbursed by such other Guarantors for the amount of such excess, pro rata, based on the respective net worth of such other Guarantors at the date enforcement hereunder is sought.

Section 11.4 Authorization

The Lenders are hereby authorized, without notice to, or demand upon, the Guarantor, which notice and demand requirements each are expressly waived hereby, and without discharging or otherwise affecting the obligations of the Guarantor hereunder (which obligations shall remain absolute and unconditional notwithstanding any such action or omission to act), from time to time, to do each of the following:

(a) supplement, renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, the Obligations, or any part of them, or otherwise modify, amend or change the terms of any promissory note or other agreement, document or instrument (including the other Loan Documents) now or hereafter executed by the Borrowers and delivered to the Lenders, or any of them, including any increase or decrease of principal or the rate of interest thereon;

(b) waive or otherwise consent to noncompliance with any provision of any instrument evidencing the Obligations, or any part thereof, or any other instrument or agreement in respect of the Obligations (including the other Loan Documents) now or hereafter executed by the Borrowers and delivered to the Lenders or any of them;

(c) accept partial payments on the Obligations;

(d) subject to receiving any necessary Bankruptcy Court approval, receive, take and hold additional security or collateral for the payment of the Obligations or any part of them and exchange, enforce, waive, substitute, liquidate, terminate, abandon, fail to perfect, subordinate, transfer, otherwise alter and release any such additional security or collateral;

(e) settle, release, compromise, collect or otherwise liquidate the Obligations or accept, substitute, release, exchange or otherwise alter, affect or impair any security or collateral for the Obligations or any part of them or any other guaranty therefor, in any manner;

(f) subject to receiving any necessary Bankruptcy Court approval, add, release or substitute any one or more other guarantors, makers or endorsers of the Obligations or any part of them and otherwise deal with the Borrowers or any other guarantor, maker or endorser;

(g) apply to the Obligations any payment or recovery (x) from any Borrower, from any other guarantor, maker or endorser of the Obligations or any part of them or (y) from the Guarantor in such order as provided herein, in each case whether such Obligations are secured or unsecured or guaranteed or not guaranteed by others;

(h) apply to the Obligations any payment or recovery from the Guarantor of the Obligations or any sum realized from security furnished by the Guarantor upon its indebtedness or obligations to the Lenders or any of them, in each case whether or not such indebtedness or obligations relate to the Obligations; and

(i) refund at any time any payment received by any Lender in respect of any Obligation, and payment to such Lender of the amount so refunded shall be fully guaranteed hereby even though prior thereto this guaranty shall have been cancelled or surrendered (or any release or termination of any Collateral by virtue thereof), and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of the Guarantor hereunder in respect of the amount so refunded;

even if any right of reimbursement or subrogation or other right or remedy of the Guarantor is extinguished, affected or impaired by any of the foregoing (including any election of remedies by reason of any judicial, non-judicial or other proceeding in respect of the Obligations that impairs any subrogation, reimbursement or other right of the Guarantor).

Section 11.5 Guaranty Absolute and Unconditional

The Guarantor hereby waives any defense of a surety or guarantor or any other obligor on any obligations arising in connection with or in respect of any of the following and hereby agrees that its obligations under this guaranty are absolute and unconditional and shall not be discharged or otherwise affected as a result of any of the following:

(a) the invalidity or unenforceability of any of Borrowers' obligations under this Agreement or any other Loan Document or any other agreement or instrument relating thereto, or any security for, or other guaranty of the Obligations or any part of them, or the lack of perfection or continuing perfection or failure of priority of any security for the Obligations or any part of them;

(b) the absence of any attempt to collect the Obligations or any part of them from any Loan Party or other action to enforce the same;

(c) failure by any Lender to take any steps to perfect and maintain any Lien on, or to preserve any rights to, any Collateral;

(d) any Lender's election, in any proceeding instituted under chapter 11 of the Bankruptcy Code, of the application of section 1111(b)(2) of the Bankruptcy Code or any applicable provisions of comparable state or foreign law;

(e) any borrowing or grant of a Lien by any Borrower, as debtor-in-possession, or extension of credit, under section 364 of the Bankruptcy Code or any applicable provisions of comparable state or foreign law;

(f) the disallowance, under section 502 of the Bankruptcy Code, of all or any portion of any Lender's claim (or claims) for repayment of the Obligations;

(g) any use of cash collateral under section 363 of the Bankruptcy Code;

(h) any agreement or stipulation as to the provision of adequate protection in any bankruptcy proceeding;

(i) the avoidance of any Lien in favor of the Lenders or any of them for any reason;

(j) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Borrower, the Guarantor or any other Subsidiaries, including any discharge of, or bar or stay against collecting, any Obligation (or any part of them or interest thereon) in or as a result of any such proceeding;

(k) failure by any Lender to file or enforce a claim against any Loan Party or its estate in any bankruptcy or insolvency case or proceeding;

(l) any action taken by any Lender if such action is authorized hereby;

(m) any election following the occurrence of an Event of Default by any Lender to proceed separately against the personal property Collateral in accordance with such Lender's rights under the UCC or, if the Collateral consists of both personal and real property, to proceed against such personal and real property in accordance with such Lender's rights with respect to such real property;

(n) any change in the corporate existence or structure of any Loan Party;

(o) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Guarantor or any other Person against any Guarantied Party;

(p) any Requirement of Law affecting any term of the Guarantor's obligations under this guaranty; or

(q) any other circumstance that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor or any other obligor on any obligations, other than the payment in full of the Obligations.

Section 11.6 Waivers

The Guarantor hereby waives diligence, promptness, presentment, demand for payment or performance and protest and notice of protest, notice of acceptance and any other notice in respect of the Obligations or any

part of them, and any defense arising by reason of any disability or other defense of any Borrower. The Guarantor shall not, until the Obligations are irrevocably paid in full and the Commitments have been terminated, assert any claim or counterclaim it may have against any Loan Party or set off any of its obligations to any Loan Party against any obligations of any Loan Party to it. In connection with the foregoing, the Guarantor covenants that its obligations hereunder shall not be discharged, except by complete performance.

Section 11.7 Reliance

The Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrowers and any endorser and other guarantor of all or any part of the Obligations, and of all other circumstances bearing upon the risk of nonpayment of the Obligations, or any part thereof, that diligent inquiry would reveal, and the Guarantor hereby agrees that no Lender shall have any duty to advise the Guarantor of information known to it regarding such condition or any such circumstances. In the event any Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to the Guarantor, such Lender shall be under no obligation (a) to undertake any investigation not a part of its regular business routine, (b) to disclose any information that such Lender, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (c) to make any other or future disclosures of such information or any other information to the Guarantor.

Section 11.8 Waiver of Subrogation and Contribution Rights

Until the Obligations have been irrevocably paid in full (other than contingent or unliquidated obligations or liabilities to the extent no claim therefor has been made) and the Commitments have been terminated, the Guarantors shall not enforce or otherwise exercise any right of subrogation to any of the rights of the Lenders or any part of them against the Borrowers or any right of reimbursement or contribution or similar right against any Borrower by reason of this guaranty or by any payment made by the Guarantor in respect of the Obligations.

Section 11.9 Subordination

The Guarantor hereby agrees that any Indebtedness of the Borrowers now or hereafter owing to the Guarantor, whether heretofore, now or hereafter created (the "*Guarantor Subordinated Debt*"), is hereby subordinated to all of the Obligations and that the Guarantor Subordinated Debt shall not be paid in whole or in part until the Obligations have been paid in full and this guaranty is terminated and of no further force or effect. No Guarantor shall accept any payment of or on account of the Guarantor Subordinated Debt at any time in contravention of the foregoing. Upon the occurrence and during the continuance of an Event of Default, the Borrowers shall pay to the Administrative Agent any payment of all or any part of the Guarantor Subordinated Debt and any amount so paid to the Administrative Agent shall be applied to payment of the Obligations as provided in *Section 2.10(e) (Payments and Computations)*. Each payment on the Guarantor Subordinated Debt received in violation of any of the provisions hereof shall be deemed to have been received by the Guarantor as trustee for the Lenders and shall be paid over to the Administrative Agent immediately on account of the Obligations, but without otherwise affecting in any manner the Guarantor's liability hereof. The Guarantor agrees to file all claims against the Borrowers in any bankruptcy or other proceeding in which the filing of claims is required by law in respect of the Guarantor Subordinated Debt, and the Administrative Agent shall be entitled to all of the Guarantor's rights thereunder. If for any reason a Guarantor fails to file such claim at least ten Business Days prior to the last date on which such claim should be filed, the Guarantor hereby irrevocably appoints the Administrative Agent as its true and lawful attorney-in-fact and is hereby authorized to act as attorney-in-fact in the Guarantor's name to file such claim or, in the Administrative Agent's discretion, to assign such claim to and cause proof of claim to be filed in the name of the Administrative Agent or its nominee. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the Administrative Agent the full amount payable on the claim in the proceeding, and, to the full extent necessary for that purpose, the Guarantor hereby assigns to the Administrative Agent all of

the Guarantor's rights to any payments or distributions to which the Guarantor otherwise would be entitled. If the amount so paid is greater than the Guarantor's liability hereunder, the Administrative Agent shall pay the excess amount to the party entitled thereto. In addition, the Guarantor hereby irrevocably appoints the Administrative Agent as its attorney-in-fact to exercise all of the Guarantor's voting rights in connection with any bankruptcy proceeding or any plan for the reorganization of the Borrowers.

Section 11.10 Default; Remedies

The obligations of the Guarantor hereunder are independent of and separate from the Obligations. If any Obligation is not paid when due, or upon any Event of Default hereunder or upon any default by any Borrower as provided in any other instrument or document evidencing all or any part of the Obligations, the Administrative Agent may, at its sole election, proceed directly and at once, without notice, against the Guarantor to collect and recover the full amount or any portion of the Obligations then due, without first proceeding against any Borrower or any other guarantor of the Obligations, or against any Collateral under the Loan Documents or joining any Borrower or any other guarantor in any proceeding against the Guarantor. At any time after maturity of the Obligations, the Administrative Agent may (unless the Obligations have been irrevocably paid in full), without notice to the Guarantor and regardless of the acceptance of any Collateral for the payment hereof, appropriate and apply toward the payment of the Obligations (a) any indebtedness due or to become due from any Lender to the Guarantor and (b) any moneys, credits or other property belonging to the Guarantor at any time held by or coming into the possession of any Lender or any of its respective Affiliates.

ARTICLE XII

THE ADMINISTRATIVE AGENT

Section 12.1 Authorization and Action

(a) Each Lender hereby appoints [NexBank, SSB] as the Administrative Agent hereunder and each Lender authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents and, in the case of the Collateral Documents, to act as agent for the Lenders and the other Secured Parties under such Collateral Documents.

(b) As to any matters not expressly provided for by this Agreement and the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders, and such instructions shall be binding upon all Lenders; *provided, however*, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to personal liability unless the Administrative Agent receives an indemnification satisfactory to it from the Lenders with respect to such action or (ii) is contrary to this Agreement or applicable law. The Administrative Agent agrees to give to each Lender prompt notice of each notice given to it by any Borrower pursuant to the terms of this Agreement or the other Loan Documents.

(c) In performing its functions and duties hereunder

and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders except to the limited extent provided in *Section 2.5(b)*, and its duties are entirely administrative in nature. The Administrative Agent does not assume and shall not be deemed to have assumed any obligation other than as expressly set forth herein and in the other Loan Documents or any other relationship as the agent, fiduciary or trustee of or for any Lender or holder of any other Obligation. The Administrative Agent may perform any of its duties under any Loan Document by or through its agents or employees.

Section 12.2 Administrative Agent's Reliance, Etc.

None of the Administrative Agent, any of its Affiliates or any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it, him, her or them under or in connection with this Agreement or the other Loan Documents, except for its, his, her or their own gross negligence or willful misconduct. Without limiting the foregoing, the Administrative Agent (a) may treat the payee of any Note as its holder until such Note has been assigned in accordance with *Section 13.2 (Assignments and Participations)*, (b) may rely on the Register to the extent set forth in *Section 2.5 (Evidence of Debt)*, (c) may consult with legal counsel (including counsel to the Borrowers or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (d) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made by or on behalf of any Loan Party in or in connection with this Agreement or any other Loan Document, (e) shall not have any duty to ascertain or to inquire either as to the performance or observance of any term, covenant or condition of this Agreement or any other Loan Document, as to the financial condition of any Loan Party or as to the existence or possible existence of any Default or Event of Default, (f) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto or thereto and (g) shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which writing may be a telecopy or electronic mail) or any telephone message believed by it to be genuine and signed or sent by the proper party or parties.

Section 12.3 Posting of Approved Electronic Communications

(a) Each of the Lenders and each Loan Party agree that the Administrative Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lenders by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent to be its electronic transmission system (the "*Approved Electronic Platform*").

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single-user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the

receipt and sufficiency of which is hereby acknowledged, each of the Lenders and each Loan Party hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE APPROVED ELECTRONIC COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". NONE OF THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS OR REPRESENTATIVES (THE "AGENT AFFILIATES") WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE APPROVED ELECTRONIC COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENT AFFILIATES IN CONNECTION WITH THE APPROVED ELECTRONIC PLATFORM OR THE APPROVED ELECTRONIC COMMUNICATIONS.

(d) Each of the Lenders and each Loan Party agree that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Approved Electronic Communications on the Approved Electronic Platform in accordance with the Administrative Agent's general-ly-applicable document retention procedures and policies.

Section 12.4 Lender Credit Decision

Each Lender acknowledges that it shall, independently and without reliance upon the Administrative Agent or any other Lender, conduct its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and continuance of the Loans. Each Lender also acknowledges that it shall, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and other Loan Documents. Except for the documents expressly required by any Loan Document to be transmitted by the Administrative Agent to the Lenders, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party that may come into the possession of the Administrative Agent or any Affiliate thereof or any employee or agent of any of the foregoing.

Section 12.5 Indemnification

Each Lender agrees to indemnify the Administrative Agent and each of its Affiliates, and each of their respective directors, officers, employees, agents and advisors (to the extent not reimbursed by the Borrowers), from and against such Lender's aggregate Ratable Portion of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements (including fees, expenses and disbursements of financial and legal advisors) of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against, the Administrative Agent or any of its Affiliates, directors, officers, employees, agents and advisors in any way relating to or arising out of this Agreement or the other Loan Documents or any action taken or omitted by the Administrative Agent under this Agreement or the other Loan Documents; *provided*, *however*, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or such Affiliate's gross negligence or willful misconduct. Without

limiting the foregoing, each Lender agrees to reimburse the Administrative Agent promptly upon demand for its ratable share of any out-of-pocket expenses (including fees, expenses and disbursements of financial and legal advisors) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of its rights or responsibilities under, this Agreement or the other Loan Documents, to the extent that the Administrative Agent is not reimbursed for such expenses by the Borrowers or another Loan Party.

Section 12.6 Successor Administrative Agent

The Administrative Agent may resign at any time by giving written notice thereof to the Lenders and the Loan Parties. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Requisite Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent shall, on behalf of the Lenders, appoint a successor Administrative Agent, selected from among the Lenders or, if no Lender is willing to act as Administrative Agent, by selecting any qualified financial institution to act as Administrative Agent. Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents. After such resignation, the retiring Administrative Agent shall continue to have the benefit of this *Article XII* as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

Section 12.7 Concerning the Collateral and the Collateral Documents

(a) Each Lender agrees that any action taken by the Administrative Agent or the Requisite Lenders (or, where required by the express terms of this Agreement, a greater proportion of the Lenders) in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Administrative Agent or the Requisite Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders and other Secured Parties. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive right and authority to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection herewith and with the Collateral Documents, (ii) execute and deliver each Collateral Document and accept delivery of each such agreement delivered by any Loan Party, (iii) act as collateral agent for the Lenders and the other Secured Parties for purposes of the perfection of all security interests and Liens created by such agreements and all other purposes stated therein, *provided, however*, that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all security interests and Liens with respect to the Collateral, including any Deposit Accounts maintained by a Loan Party with, and cash and Cash Equivalents held by, such Lender, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such action as is necessary or desirable to maintain the perfection and priority of the security interests and Liens created or purported to be created by the Collateral Documents and (vi) except as may be otherwise specifically restricted by the terms hereof or of any other Loan Document, exercise all remedies given to the Ad-

ministrative Agent, the Lenders and the other Secured Parties with respect to the Collateral under the Loan Documents relating thereto, applicable law or otherwise.

(b) Each of the Lenders hereby consents to the release and hereby directs, in accordance with the terms hereof, the Administrative Agent to release any Lien held by the Administrative Agent for the benefit of the Lenders against any of the following:

(i) all of the Collateral and all Loan Parties, upon termination of the Commitments and payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable;

(ii) any assets that are subject to a Lien permitted by *Section 7.2 (d) or (e) (Liens, Etc.)*; and

(iii) any part of the Collateral sold or disposed of by a Loan Party if such sale or disposition is permitted by this Agreement (or permitted pursuant to a waiver of or consent to a transaction otherwise prohibited by this Agreement).

Each of the Lenders hereby directs the Administrative Agent to execute and deliver or file such termination and partial release statements and do such other things as are necessary to release Liens to be released pursuant to this *Section 12.7* promptly upon the effectiveness of any such release.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Amendments, Waivers, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be in writing and (x) in the case of any such waiver or consent, signed by the Requisite Lenders (or by the Administrative Agent with the consent of the Requisite Lenders) and (y) in the case of any other amendment, by the Requisite Lenders (or by the Administrative Agent with the consent of the Requisite Lenders) and the Borrowers, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided*, *however*, that no amendment, waiver or consent shall, unless in writing and signed by each Lender directly affected thereby, and, as applicable, subject to entry of a Bankruptcy Court order approving such amendment, waiver or consent, in addition to the Requisite Lenders (or the Administrative Agent with the consent thereof), and subject to any necessary Bankruptcy Court Approval, do any of the following:

(i) waive or eliminate any condition specified in *Section 3.1 (Conditions Precedent to Initial Loans)* (subject to the provisions of *Section 3.3 (Determinations of Initial Borrowing Conditions)*) or *3.2(b) (Conditions Precedent to Each Loan)*, including, without limitation, any condition based upon another provision hereof even though the waiver of such other provision requires only the concurrence of the Requisite Lenders;

(ii) increase the Commitment of such Lender or subject such Lender to any additional obligation;

(iii) extend the scheduled final maturity of any Loan owing to such Lender, or waive, reduce or postpone any scheduled date fixed for the payment or reduction of principal or interest of any such Loan or fees owing to such Lender (it being understood that *Section 2.7 (Mandatory Prepayments)* does not provide for scheduled dates fixed for payment) or for the reduction of such Lender's Commitment;

(iv) reduce, or release any Loan Party from its obligations to repay, the principal amount of any Loan owing to such Lender (other than by the payment or prepayment thereof);

(v) reduce the rate of interest on any Loan outstanding and owing to such Lender or any fee payable hereunder to such Lender;

(vi) expressly subordinate any of the Obligations or any Liens securing the Obligations;

(vii) postpone any scheduled date fixed for payment of interest or fees owing to such Lender or waive any such payment;

(viii) change the aggregate Ratable Portions of Lenders required for any or all Lenders to take any action hereunder;

(ix) release all or substantially all of the Collateral except as provided in *Section 12.7(b) (Concerning the Collateral and the Collateral Documents)* or release any Loan Party from its payment obligation to such Lender under this Agreement or the Notes owing to such Lender (if any) under this Agreement except pursuant to a waiver or consent of a transaction otherwise prohibited by this Agreement;

(x) amend *Section 2.10(f) (Payments and Computations)*;

(xi) amend *Section 12.7(b) (Concerning the Collateral and the Collateral Documents)*, *Section 13.7 (Sharing of Payments, Etc.)*, this *Section 13.1* or either definition of the terms "*Requisite Lenders*" or "*Ratable Portion*";

(xii) amend *Section 4.12 (Use of Proceeds)* or *Section 6.9 (Application of Proceeds)*; or

(xiii) waive or eliminate any provision of this Agreement prohibiting any action in the absence of the consent of each Lender or requiring the consent of each Lender to effect any action;

and *provided, further*, that (x) any modification of the application of payments to the Loans pursuant to *Section 2.7 (Mandatory Prepayments)* or the reduction of the Commitments pursuant to *Section 2.3(b) (Reduction and Termination of the Commitments)* shall require the consent of each of the Lenders, (y) no amendment, waiver or consent shall, unless in writing and signed by any Special Purpose Vehicle that has been granted an option pursuant to *Section 13.2 (Assignments and Participations)*, affect the grant or nature of such option or the right or duties of such Special Purpose Vehicle hereunder and (z) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement or the other Loan Documents; and *provided, further*, that the Administrative Agent may, with the consent of the Borrowers, amend, modify or supplement this Agreement to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender.

(b) The Administrative Agent may, but shall have no obligation to, with the written concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Loan Party in any case shall entitle such Loan Party to any other or further notice or demand in similar or other circumstances.

Section 13.2 Assignments and Participations

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Loan Parties may not assign or otherwise transfer any of their rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of clause *(b)* below, (ii) by way of participation in accordance with the provisions of *clause (g)* below or (iii) by way of a grant to a Special Purpose Vehicle or a pledge or assignment of a security interest subject to the restrictions of *clause (f)* below (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, express or implied, shall be construed to confer upon any Person (other than the parties hereto), their respective successors and permitted assigns, Participants to the extent provided in *clause (g)* below, Special Purpose Vehicles to the extent provided in *(f)* below and, to the extent expressly contemplated hereby, each of the Administrative Agent and the Lenders, their respective Affiliates and each of their respective partners, directors, officers, employees, agents, trustee, representatives, attorneys, consultants and advisors) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Each Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations hereunder (including all or a portion of its Commitment and the Loans at the time owing to it); *provided*, *however*, that any such assignment shall be subject to the following conditions:

(i) (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned and (B) in any case not described in *clause (b)(i)(A)* above, the aggregate amount of the Loans, the Commitment or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans or the Outstandings of the assigning Lender subject to each such assignment (determined as of the effective date of the Assignment and Acceptance with respect to such assignment) shall not be less than $100,000, unless each of the Administrative Agent and, so long as no Event of Default shall have occurred and be continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) if any such assignment shall be of the assigning Lender's Loans and Commitment, such assignment shall be made as an assignment of a proportionate part of all the assigning Lenders rights and obligations under this Agreement with respect to the Loans and Commitment assigned.

(iii) No consent shall be required for any assignment except to the extent required by *clause (b)(i)(B)* above; provided, however, the Administrative Agent shall promptly (in any event within two Business Days of the effectiveness of any assignment) notify the Borrower of the occurrence of any assignment.

(iv) The parties to each assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, together with any Note (if the assigning Lender's Loans are evidenced by a Note), subject to such assignment.

(c) Subject to acceptance and recording thereof by the Administrative Agent in the Register pursuant to *Section 2.5 (Evidence of Debt)* and the receipt of the assignment fee referenced in *clause (b)(iv)* above, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, (B) the Notes (if any) corresponding to the Loans assigned thereby shall be transferred to such assignee by notation in the Register and (C) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under the Loan Documents (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of *Sections 2.11 (Capital Adequacy*, *2.12 (Taxes), 13.3 (Costs and Expenses), 13.4 (Indemnities)* and *13.5 (Limitation of Liability)* with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with *clause (g)* of this *Section 13.2*.

(d) The Administrative Agent shall maintain at its address referred to in *Section 12.8 (Notices, Etc.)* a copy of each Assignment and Acceptance delivered to and accepted by it and shall record in the Register the names and addresses of the Lenders and the principal amount of the Loans owing to each Lender from time to time and the Commitments of each Lender. Any assignment pursuant to this *Section 12.2* shall not be effective until such assignment is recorded in the Register.

(e) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee, the Administrative Agent shall, if such Assignment and Acceptance has been completed, (i) accept such Assignment and Acceptance, (ii) record or cause to be recorded the information contained therein in the Register and (iii) give prompt notice thereof to the Loan Parties. Within five Business Days after their receipt of such notice, the Borrowers, at their own expense, shall, if requested by such assignee, execute and deliver to the Administrative Agent, new Notes to the order of such assignee in an amount equal to the Commitments assumed by it pursuant to such Assignment and Acceptance and, if the assigning Lender has surrendered any Note for exchange in connection with the assignment and has retained Commitments hereunder, new Notes to the order of the assigning Lender in an amount equal to the Commitments retained by it hereunder. Such new Notes shall be dated the same date as the surrendered Notes and be in substantially the form of *Exhibit B (Form of Note)*.

(f) In addition to the other assignment rights provided in this *Section 13.2*, each Lender may do each of the following:

(i) grant to a Special Purpose Vehicle the option to make all or any part of any Loan that such Lender would otherwise be required to make hereunder and the exercise of such option by any such Special Purpose Vehicle and the making of Loans pursuant thereto shall

satisfy (once and to the extent that such Loans are made) the obligation of such Lender to make such Loans thereunder, *provided, however*, that (x) nothing herein shall constitute a commitment or an offer to commit by such a Special Purpose Vehicle to make Loans hereunder and no such Special Purpose Vehicle shall be liable for any indemnity or other Obligation (other than the making of Loans for which such Special Purpose Vehicle shall have exercised an option, and then only in accordance with the relevant option agreement) and (y) such Lender's obligations under the Loan Documents shall remain unchanged, such Lender shall remain responsible to the other parties for the performance of its obligations under the terms of this Agreement and shall remain the holder of the Obligations for all purposes hereunder; and

(ii) pledge or assign a security interest in all or any portion of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans) to secure obligations of such Lender without notice to or consent of the Administrative Agent or the Borrowers, including any pledge or assignment to secure obligations to any Federal Reserve Bank (pursuant to Regulation A of the Federal Reserve Board);

provided, however, that no such assignment or grant shall release such Lender from any of its obligations hereunder except as expressly provided in *clause (i)* above and except, in the case of a subsequent foreclosure pursuant to an assignment as collateral, if such foreclosure is made in compliance with the other provisions of this *Section 13.2* other than this *clause (f)* or *clause (g)* below. Each party hereto acknowledges and agrees that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any such Special Purpose Vehicle, such party shall not institute against, or join any other Person in instituting against, any Special Purpose Vehicle that has been granted an option pursuant to this *clause (f)* any bankruptcy, reorganization, insolvency or liquidation proceeding (such agreement shall survive the payment in full of the Obligations). The terms of the designation of, or assignment to, such Special Purpose Vehicle shall not restrict such Lender's ability to, or grant such Special Purpose Vehicle the right to, consent to any amendment or waiver to this Agreement or any other Loan Document or to the departure by any Loan Party from any provision of this Agreement or any other Loan Document without the consent of such Special Purpose Vehicle except, as long as the Administrative Agent and the Lenders and other Secured Parties shall continue to, and shall be entitled to continue to, deal solely and directly with such Lender in connection with such Lender's obligations under this Agreement, to the extent any such consent would reduce the principal amount of, or the rate of interest on, any Obligations, amend this *clause (f)* or postpone any scheduled date of payment of such principal or interest. Each Special Purpose Vehicle shall be entitled to the benefits of *Section 2.11 (Capital Adequacy and Section 2.12 (Taxes)* as if it were such Lender; *provided, however*, that anything herein to the contrary notwithstanding, no Borrower shall, at any time, be obligated to make under *Section 2.11 (Capital Adequacy)* or *Section 2.12 (Taxes)* to any such Special Purpose Vehicle and any such Lender any payment in excess of the amount the Borrowers would have been obligated to pay to such Lender in respect of such interest if such Special Purpose Vehicle had not been assigned the rights of such Lender hereunder; and *provided, further*, that such Special Purpose Vehicle shall have no direct right to enforce any of the terms of this Agreement against the Borrowers, the Administrative Agent or the other Lenders.

(g) (i) Any Lender may at any time, without the consent of, or notice to, any Loan Party or the Administrative Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(i) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (A) reduce the amount, or postpone any date fixed for, any amount (whether of principal, interest or fees) payable to such Participant under the Loan Documents, to which such Participant would otherwise be entitled under such participation or (B) result in the release of all or substantially all of the Collateral other than in accordance with *Section 12.7(b) (Concerning the Collateral and the Collateral Documents).* Subject to *clause (h)* below, each of the Borrowers agrees that each Participant shall be entitled to the benefits of *Section 2.11 (Capital Adequacy and Section 2.12 (Taxes)* to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to *clause (b)* above. To the extent permitted by law, each Participant also shall be entitled to the benefits of *Section 13.6 (Right of Set-off)* as though it were a Lender, provided such Participant agrees to be subject to *Section 13.7 (Sharing of Payments, Etc.)* as though it were a Lender.

(h) A Participant shall not be entitled to receive any greater payment under *Section 2.11 (Capital Adequacy) or Section 2.12 (Taxes)* than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrowers' prior written consent. A Participant that would be a Non-U.S. Lender if it were a Lender shall not be entitled to the benefits of *Section 2.12 (Taxes)* unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with *Section 2.12(g) (Taxes)* as though it were a Lender.

(i) The words "*execution*," "*signed*," "*signature*," and words of like import in any Assignment and Acceptance shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 13.3 Costs and Expenses

(a) Each Loan Party agrees upon demand to jointly and severally pay, or reimburse the Administrative Agent for, all of the Administrative Agent's reasonable, actual and documented external audit, legal, appraisal, valuation, filing, document duplication and reproduction and investigation expenses and for all other reasonable actual and documented out-of-pocket costs and expenses of every type and nature (including the reasonable, actual and documented fees, expenses and disbursements of one outside counsel and one regulatory legal counsel, auditors, accountants, appraisers, printers, insurance and environmental advisors, and other consultants and agents) incurred by the Administrative Agent in connection with any of the following: (i) the Administrative Agent's audit and investigation of the Loan Parties in connection with the preparation, negotiation or execution of any Loan Document or the Administrative Agent's periodic audits of the Loan Parties, as the case may be, (ii) the preparation, negotiation, execution or interpretation of this Agreement (including, without limitation, the satisfaction or attempted satisfaction of any condition set forth in *Article III (Conditions To Loans)*), any Loan Document or any proposal letter or

commitment letter issued in connection therewith, or the making of the Loans hereunder, (iii) the creation, perfection or protection of the Liens under any Loan Document (including any reasonable fees, disbursements and expenses for local counsel in various jurisdictions), (iv) the ongoing administration of this Agreement and the Loans, including consultation with attorneys in connection therewith and with respect to the Administrative Agent's rights and responsibilities hereunder and under the other Loan Documents, (v) the protection, collection or enforcement of any Obligation or the enforcement of any Loan Document, (vi) the commencement, defense or intervention in any court proceeding relating in any way to the Obligations, any Loan Party, this Agreement or any other Loan Document, (vii) the response to, and preparation for, any subpoena or request for document production with which the Administrative Agent is served or deposition or other proceeding in which the Administrative Agent is called to testify, in each case, relating in any way to the Obligations, any Loan Party, this Agreement or any other Loan Document or (viii) any amendment, consent, waiver, assignment, restatement, or supplement to any Loan Document or the preparation, negotiation and execution of the same.

(b) Each of the Loan Parties further agrees to pay or reimburse the Administrative Agent upon demand for all reasonable, actual and documented out-of-pocket costs and expenses, including, subject to *Section 13.3(a)* above, reasonable, actual and documented attorneys' fees, incurred by the Administrative Agent in connection with any of the following: (i) in enforcing any Loan Document or Obligation or any security therefor or exercising or enforcing any other right or remedy available by reason of an Event of Default, (ii) in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or in any insolvency or bankruptcy proceeding, (iii) in commencing, defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to the Obligations, any Loan Party, and related to or arising out of the transactions contemplated hereby or by any other Loan Document or (iv) in taking any other action in or with respect to any suit or proceeding (bankruptcy or otherwise) described in *clause (i)*, *(ii)* or *(iii)* above (including, without limitation, the preparation, negotiation, confirmation, implementation, enforcement or effectiveness of any chapter 11 plan relating to any of the Loan Parties or any other matter related to the Cases).

Section 13.4 Indemnities

(a) Each of the Loan Parties agrees to indemnify and hold harmless the Administrative Agent and each Lender and each of their respective Affiliates, and each of the directors, officers, employees, agents, trustees, representatives, attorneys, consultants and advisors of or to any of the foregoing (including those retained in connection with the satisfaction or attempted satisfaction of any condition set forth in *Article III (Conditions To Loans)* (each such Person being an "*Indemnitee*") from and against any and all claims, damages, liabilities, obligations, losses, penalties, actions, judgments, suits, costs, disbursements and expenses, joint or several, of any kind or nature (including fees, disbursements and expenses of financial and legal advisors to any such Indemnitee) that may be imposed on, incurred by or asserted against any such Indemnitee in connection with or arising out of any investigation, litigation or proceeding, whether or not such investigation, litigation or proceeding is brought by any such indemnitee or any of its directors, security holders or creditors or any such Indemnitee, director, security holder or creditor is a party thereto, whether direct, indirect, or consequential and whether based on any federal, state or local law or other statutory regulation, securities or commercial law or regulation, or under common law or in equity, or on contract, tort or otherwise, in any manner relating to or arising out of

this Agreement, any other Loan Document, any Obligation, or any act, event or transaction related or attendant to any thereof, or the use or intended use of the proceeds of the Loans in connection with any investigation of any potential matter covered hereby (collectively, the "*Indemnified Matters*"); *provided*, *however*, that no Loan Party shall have any liability under this *Section 13.4* to an Indemnitee with respect to any Indemnified Matter that has resulted primarily from the gross negligence or willful misconduct of that Indemnitee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Without limiting the foregoing, "*Indemnified Matters*" include (i) all Environmental Liabilities and Costs arising from or connected with the past, present or future operations of any Loan Party involving any property subject to a Collateral Document, or damage to real or personal property or natural resources or harm or injury alleged to have resulted from any Release of Contaminants on, upon or into such property or any contiguous real estate, (ii) any costs or liabilities incurred in connection with any Remedial Action concerning any Loan Party, (iii) any costs or liabilities incurred in connection with any Environmental Lien and (iv) any costs or liabilities incurred in connection with any other matter under any Environmental Law, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (49 U.S.C. § 9601 *et seq*.) and applicable state property transfer laws, whether, with respect to any such matter, such Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor in interest to any Loan Party, or the owner, lessee or operator of any property of any Loan Party by virtue of foreclosure, except, with respect to those matters referred to in *clauses (i)*, *(ii)*, *(iii)* and *(iv)* above, to the extent (x) incurred following foreclosure by the Administrative Agent or any Lender, or the Administrative Agent or any Lender having become the successor in interest to any Loan Party and (y) attributable solely to acts of the Administrative Agent or such Lender or any agent on behalf of the Administrative Agent or such Lender.

(b) The Loan Parties shall indemnify the Administrative Agent, the Lenders for, and hold the Administrative Agent and the Lenders harmless from and against, any and all claims for brokerage commissions, fees and other compensation made against the Administrative Agent and the Lenders for any broker, finder or consultant with respect to any agreement, arrangement or understanding made by or on behalf of any Loan Party or any of its Subsidiaries in connection with the transactions contemplated by this Agreement.

(c) The Loan Parties, at the request of any Indemnitee, shall have the obligation to defend against any investigation, litigation or proceeding or requested Remedial Action, in each case contemplated in *clause (a)* above, and each Loan Party may participate in the defense thereof with legal counsel of such Loan Party's choice. In the event that such Indemnitee requests any Loan Party to defend against such investigation, litigation or proceeding or requested Remedial Action, such Loan Party shall promptly do so and such Indemnitee shall have the right to have legal counsel of its choice participate in such defense. No action taken by legal counsel chosen by such Indemnitee in defending against any such investigation, litigation or proceeding or requested Remedial Action, shall vitiate or in any way impair the Loan Parties' obligation and duty hereunder to indemnify and hold harmless such Indemnitee.

(d) Each of the Loan Parties agrees that any indemnification or other protection provided to any Indemnitee pursuant to this Agreement (including pursuant to this *Section 13.4*) or any other Loan Document shall (i) survive payment in full of the Obligations and (ii) inure to the benefit of any Person that was at any time an Indemnitee under this Agreement or any other Loan Document.

Section 13.5 Limitation of Liability

(a) Each of the Loan Parties agrees that no Indemnitee shall have any liability (whether in contract, tort or otherwise) to any Loan Party or any of their respective Subsidiaries or any of their respective equity holders or creditors for or in connection with the transactions contemplated hereby and in the other Loan Documents, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Indemnitee's gross negligence or willful misconduct. In no event, however, shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings). Each of the Loan Parties hereby waives, releases and agrees (each for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(b) IN NO EVENT SHALL ANY AGENT AFFILIATE HAVE ANY LIABILITY TO ANY LOAN PARTY, LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT OR CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY OR ANY AGENT AFFILIATE'S TRANSMISSION OF APPROVED ELECTRONIC COMMUNICATIONS THROUGH THE INTERNET OR ANY USE OF THE APPROVED ELECTRONIC PLATFORM, EXCEPT TO THE EXTENT SUCH LIABILITY OF ANY AGENT AFFILIATE IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH AGENT AFFILIATE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Section 13.6 Right of Set-off

Subject to any requirement of notice provided in the Final Order, upon the occurrence and during the continuance of any Event of Default each Lender and each Affiliate of a Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender or its Affiliates to or for the credit or the account of any Loan Party against any and all of the Obligations now or hereafter existing whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and even though such Obligations may be unmatured. Each Lender agrees promptly to notify the Loan Parties after any such set-off and application made by such Lender or its Affiliates; *provided*, *however*, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this *Section 13.6* are in addition to the other rights and remedies (including other rights of set-off) that such Lender may have.

Section 13.7 Sharing of Payments, Etc.

(a) If any Lender (directly or through an Affiliate thereof) obtains any payment (whether voluntary, involuntary, through the exercise of any right of set-off (including pursuant to *Section 13.6 (Right of Set-off))* or otherwise) of the Loans owing to it, any interest thereon or fees in respect thereof (other than payments pursuant to *Section 2.11 (Capital Adequacy)* or *2.12 (Taxes)*) or otherwise receives any Collateral or any Proceeds of Collateral (other than payments pursuant to *Section 2.11 (Capital Adequacy) or 2.12 (Taxes)*) (in each case, whether voluntary, involuntary, through the exercise of any right of set-off (including pursuant to *Section*

13.6 (Right of Set-off)) or otherwise) in excess of its Ratable Portion of all payments of such Obligations obtained by all the Lenders, such Lender (a "*Purchasing Lender*") shall forthwith purchase from the other Lenders (each, a "*Selling Lender*") such participations in their Loans or other Obligations as shall be necessary to cause such Purchasing Lender to share the excess payment ratably with each of them.

(b) If all or any portion of any payment received by a Purchasing Lender is thereafter recovered from such Purchasing Lender, such purchase from each Selling Lender shall be rescinded and such Selling Lender shall repay to the Purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Selling Lender's ratable share (according to the proportion of (i) the amount of such Selling Lender's required repayment in relation to (ii) the total amount so recovered from the Purchasing Lender) of any interest or other amount paid or payable by the Purchasing Lender in respect of the total amount so recovered.

(c) The Loan Parties agree that any Purchasing Lender so purchasing a participation from a Selling Lender pursuant to this *Section 13.7* may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Loan Parties in the amount of such participation.

Section 13.8 Notices, Etc.

(a) *Addresses for Notices*. All notices, demands, requests, consents and other communications provided for in this Agreement shall be given in writing, or by any telecommunication device capable of creating a written record (including electronic mail), and addressed to the party to be notified as follows:

(i) if to the Loan Parties:

TERRESTAR CORPORATION
TERRESTAR HOLDINGS INC.
MOTIENT VENTURES HOLDING INC.
344 Maple Avenue West, #275
Vienna, VA 22180
Attention: Doug Brandon
E-Mail Address: doug.brandon@terrestar.com

and

PIRINATE CONSULTING, LLC
5 Canoe Brook Drive
Livingston, NJ 07039
Attn: Eugene Davis, Chief Restructuring Officer, TSC
E-Mail Address: genedavis@pirinateconsulting.com

with a copy to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attention: Ira Dizengoff, Arik Preis and Sarah Schultz

E-mail Addresses: idizengoff@akingump.com; apreis@akingump.com;

sschultz@akingump.com

(ii) if to any Lender, at its Lending Office specified opposite its name on *Schedule II (Lending Offices and Addresses for Notices)* or on the signature page of any applicable Assignment and Acceptance;

(iii) if to the Administrative Agent:

[NexBank, SSB
13455 Noel Road
22nd Floor
Dallas, TX 75240
Attention: Jeff Scott, Vice President, Agency Services
E-Mail Address: jeffscott@nexbank.com]

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Attention: Scott K. Charles
E-Mail Address: skcharles@wlrk.com

and with copies to

Each of the Lenders at the appropriate addresses in accordance with clause (iii) above,

or at such other address as shall be notified in writing (x) in the case of the Borrowers, the Administrative Agent, to the other parties and (y) in the case of all other parties, to the Borrowers and the Administrative Agent.

(b) *Effectiveness of Notices*. All notices, demands, requests, consents and other communications described in *clause (a)* above shall be effective (i) if delivered by hand, including any overnight courier service, upon personal delivery, (ii) if delivered by mail, on the third day after such notice is deposited in the mails, (iii) if delivered by posting to an Approved Electronic Platform, an Internet website or a similar telecommunication device requiring that a user have prior access to such Approved Electronic Platform, website or other device (to the extent permitted by *Section 12.3* to be delivered thereunder), when such notice, demand, request, consent and other communication shall have been made generally available on such Approved Electronic Platform, Internet website or similar device to the class of Person being notified (regardless of whether any such Person must accomplish, and whether or not any such Person shall have accomplished, any action prior to obtaining access to such items, including registration, disclosure of contact information, compliance with a standard user agreement or undertaking a duty of confidentiality) and such Person has been notified that such communication has been posted to the Approved Electronic Platform and (iv) if delivered by electronic mail or any other telecommunications device, when transmitted to an electronic mail address (or by another means of electronic delivery) as provided in *clause (a)* above; *provided, however*, that notices and communications to the Administrative Agent pursuant to *Article II (The Facility)* or *Article XII (The Administrative Agent)* shall not be effective until received by the Administrative Agent.

(c) *Use of Electronic Platform*. Notwithstanding

clause (a) and *(b)* above (unless the Administrative Agent requests that the provisions of *clause (a)* and *(b)* above be followed) and any other provision in this Agreement or any other Loan Document providing for the delivery of any Approved Electronic Communication by any other means, the Loan Parties shall deliver all Approved Electronic Communications to the Administrative Agent by properly transmitting such Approved Electronic Communications in an electronic/soft medium in a format acceptable to the Requisite Lenders to jeffscott@nexbank.com or such other electronic mail address (or similar means of electronic delivery) as the Administrative Agent may notify the Loan Parties. Nothing in this *clause (c)* shall prejudice the right of the Administrative Agent or any Lender to deliver any Approved Electronic Communication to any Loan Party in any manner authorized in this Agreement or to request that the Loan Parties effect delivery in such manner.

Section 13.9 No Waiver; Remedies

No failure on the part of any Lender or the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 13.10 Governing Law

This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York without giving effect to any provision thereof that would require the application of the law of another jurisdiction.

Section 13.11 Submission to Jurisdiction; Service of Process

(a) Any legal action or proceeding with respect to this Agreement or any other Loan Document may be brought in the courts of the State of New York located in the City of New York or of the United States of America for the Southern District of New York, and, by execution and delivery of this Agreement, each Loan Party hereby accept for itself and in respect of its property, generally and unconditionally, and consents to the exclusive jurisdiction of the aforesaid courts. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions.

(b) Each of the Loan Parties agrees that a final judgment in any such action or proceeding referenced in the forgoing *clause (a)* shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Nothing contained in this *Section 13.11* shall affect the right of the Administrative Agent or any Lender to serve process in any manner permitted by law or commence legal proceedings or otherwise proceed against the Loan Parties in any other jurisdiction.

(d) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase Dollars with such other currency at the

spot rate of exchange quoted by the Administrative Agent at 11:00 a.m. (New York time) on the Business Day preceding that on which final judgment is given, for the purchase of Dollars, for delivery two Business Days thereafter.

(e) Notwithstanding any other provision of this *Section 13.12*, the Bankruptcy Court shall have exclusive jurisdiction over any action or dispute involving related to or arising out of this Agreement.

Section 13.12 Waiver of Jury Trial

Each of the Administrative Agent, the Lenders and the Loan Parties irrevocably waives trial by jury in any action or proceeding with respect to this Agreement or any other Loan Document.

Section 13.13 Marshaling; Payments Set Aside

None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any of the Loan Parties makes a payment or payments to the Administrative Agent, the Lenders or any such Person receives payment from the proceeds of the Collateral or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, right and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

Section 13.14 Section Titles

The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto, except when used to reference a section. Any reference to the number of a clause, sub-clause or subsection hereof immediately followed by a reference in parenthesis to the title of the Section containing such clause, sub-clause or subsection is a reference to such clause, sub-clause or subsection and not to the entire Section; *provided, however*, that, in case of direct conflict between the reference to the title and the reference to the number of such Section, the reference to the title shall govern absent manifest error. If any reference to the number of a Section (but not to any clause, sub-clause or subsection thereof) is followed immediately by a reference in parenthesis to the title of a Section, the title reference shall govern in case of direct conflict absent manifest error.

Section 13.15 Effectiveness; Execution in Counterparts

This Agreement shall become effective when it shall have been executed by the Loan Parties and the Administrative Agent and when the Administrative Agent shall have been notified by each Lender that such Lender has executed it. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed signature page of this Agreement by facsimile transmission, electronic mail or similar electronic means. or by posting on the Approved Electronic Platform, shall be as effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all parties shall be lodged with the Loan Parties and the Administrative Agent.

Section 13.16 Entire Agreement

This Agreement, together with all of the other Loan Documents and all certificates and documents delivered hereunder or thereunder, embodies the entire agreement of the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. In the event of any conflict between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall govern.

Section 13.17 Confidentiality

Each Lender and the Administrative Agent agree to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder, (f) subject to an agreement containing provisions substantially the same as those of this *Section 13.17*, to (i) any assignee of, Participant in or Special Purpose Vehicle grantee of any option described in *Section 13.2 (Assignments and Participations)* or any prospective assignee of, Participant in or Special Purpose Vehicle grantee of any option described in *Section 13.2 (Assignments and Participations)*, any of its rights or obligations under this Agreement or (ii) any actual or prospective party (or its managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives) to any swap or derivative or other transaction under which payments are to be made by reference to any of the Loan Parties and its obligations, this Agreement or payments hereunder, (iii) any rating agency or (iv) the CUSIP Service Bureau or any similar organization, (g) with the consent of the Borrowers or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this *Section 13.17* or (ii) becomes available to the Administrative Agent or any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers. Any Person required to maintain the confidentiality of the Information as provided in this *Section 13.17* shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 13.18 Patriot Act Notice.

Each Lender subject to the Patriot Act hereby notifies the Loan Parties that, pursuant to Section 326 of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrowers, including the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

[Signature Pages Follow]

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

TERRESTAR CORPORATION,
as a Borrower

By: _____
Name:
Title:

TERRESTAR HOLDINGS INC.,
as a Borrower

By: _____
Name:
Title:

MOTIENT VENTURES HOLDING INC.,
as a Guarantor

By: _____
Name:
Title:

[NEXBANK, SSB]
as Administrative Agent

By: _____
Name:
Title:

Lenders:

SOLA LTD

By: _____
Name:
Title:

SOLUS CORE OPPORTUNITIES MASTER FUND LTD

By: _____
Name:
Title:

Lenders:

OZ MASTER FUND, LTD

By: _____
Name:
Title:

GORDEL HOLDINGS LIMITED

By: _____
Name:
Title:

Lenders:

HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.

By: _____
Name:
Title:

Lenders:

WEST FACE LONG TERM OPPORTUNITIES GLOBAL MASTER L.P.

By: _____
Name:
Title:

Exhibit C

Declaration of Steven Zelin

(To Be Filed)