

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In Re:

Prospect Capital Corporation,

Plaintiff,

vs.

Wellspring Capital Management, LLC,
Wellspring Capital Partners IV, L.P., WCM
Genpar IV, L.P., WCM Genpar IV CP, LLC,
Alexander E. Carles, William F. Dawson, Jr.,
John E. Morningstar, Bradley Johnson, F.
Hewitt Grant, Charles E. Walker, Jr., Todd
Boehly, Bernard Ziomek, Andrew Kupchik, and
John Does One Through One Hundred,

Defendants.

Adversary No. 19-80071-dd

**F. HEWITT GRANT'S MOTION TO DISMISS
AND JOINDER TO THE WELLSRING DEFENDANTS' MOTION TO DISMISS¹**

Defendant F. Hewitt Grant ("Grant") moves pursuant to Fed. R. Civ. P. 12(b)(6), made applicable to this adversary proceeding by Fed. R. Bankr. P. 7012(b)(7), to dismiss the First Amended Complaint for failure to state a claim upon which relief can be granted. Further, Grant joins in the Motion to Dismiss of Wellspring Capital Management LLC ("Wellspring Capital"), Wellspring Capital Partners IV, L.P. ("Wellspring IV"), WCM GenPar IV, L.P., WCM GenPar IV GP, LLC and Alexander E. Carles (collectively the "Wellspring Defendants").

FACTUAL BACKGROUND

In his Complaint, the Trustee seeks to avoid and recover alleged prepetition fraudulent

¹ Defendant Grant anticipates that the Wellspring Defendants will also file a Motion to Dismiss. Defendant Grant may supplement this pleading with a more specific joinder with the arguments to be set forth by the Wellspring Defendants.

transfers dating back to 2012 and 2013. (Complt. ¶¶ 4-6.) The Trustee alleges that he has standing pursuant to 11 U.S.C. §§ 544 and 550 by stepping into the shoes of Prospect Capital Corporation (“Prospect”). (Complt. ¶¶ 72, 82). In 2012 and 2013, Prospect and Summit Partners Credit Funds, LP and related entities (“Summit”) entered into several transactions to provide second lien financing to Ellet Brothers LLC (“Ellet”) and its subsidiaries. The dividends paid to the defendants that the Trustee now seeks to recover were a significant percentage of the proceeds of these loans. The details of the loan transactions and copies of the loan documents are further described in this motion and Wellspring’s Motion to Dismiss. The Wellspring Defendants’ statements concerning the parties involved and the transactions between the Debtors and Prospect are adopted by Grant and incorporated herein as fully as if restated herein.

As more fully discussed below, the Achilles’ heel in the argument presented by the Trustee is that the “triggering unsecured creditor” by whom the Trustee acquires standing to bring this action pursuant to 11 U.S.C. § 544(b)(1): (i) loaned the Debtor the funds that the Trustee now seeks to recover, (ii) had knowledge that a substantial portion of the loan proceeds would be distributed as dividends to the defendants, (iii) authorized the distribution of the dividends now in issue, (iv) subsequently ratified the dividend distributions, and (v) stated in clear and concise language within the loan documents that all of the foregoing events occurred and were authorized by the lenders. Consequently, the Trustee’s efforts to recover the transfers in issue should be prohibited as a matter of law at this stage of the proceeding.

ARGUMENT

The Trustee lacks standing to bring the fraudulent conveyance claims alleged in the Complaint because he has failed to identify a triggering unsecured creditor whose claims are not barred. Further, even if the Trustee had standing, he has failed to state a claim for a fraudulent

conveyance because he has failed to plead, and cannot prove, actual fraud.

1. **The Trustee has failed to identify a triggering creditors whose claim is not barred.**

In order to bring a fraudulent conveyance claim, a trustee must stand in the shoes of a specific triggering unsecured creditor. 11 U.S.C. § 544. If the triggering creditor is subject to a defense that bars its claim, then the trustee's claim is also barred. Here, the Trustee has alleged that he stands in the shoes of Prospect, but there are a number of reasons why Prospect is barred from pursuing any claims for fraudulent conveyance.

The loan documents clearly state the purpose for the loan and the intended use of the proceeds. Section 1.1.3 of the Second Lien Loan and Security Agreement dated September 28, 2012) (attached hereto as **Exh. 1**) provides:

1.1.3 Use of Proceeds. Proceeds of the Term Loans shall be used by Borrowers solely for one or more of the following purposes: (i) **to make a one-time Distribution to Holdings (for further Distribution to SportCo)** to repay a portion of the Wellspring Debt on the Closing Date; (ii) to pay the Closing Date Distribution on the Closing Date, and (iii) to pay the fees and transaction expenses associated with the closing of the Transactions described herein. In no event may any Term Loan proceeds be used by Borrower to make a contribution to the equity of any Subsidiary which is not a Borrower, to purchase or to carry, or to reduce, retire or refinance any Debt incurred to purchase or carry any Margin Stock or for any related purpose that violates the provisions of Regulation T, U or X of the Board of Governors.

(emphasis added). The Complaint alleges that, as required by the Second Lien Loan and Security Agreement and related amendments, the borrower used approximately \$139.6 million of the loan proceeds to repay existing debts, approximately \$134 million to fund distributions to shareholders, and the remaining proceeds to pay the lending and transaction fees associated with the overall financial reorganization. (Complt. ¶ 36.)

On March 7, 2013, Prospect approved an additional loan of \$60 million evidenced by the First Amendment and Limited Consent (the "First Amendment", attached hereto as **Exh. 2**), which contained an express requirement at ¶2(F) that the funds be used for a dividend to the borrowers'

shareholders.

At the time of the alleged fraudulent transfers, Grant was an equity holder in SportCo., which is a Delaware corporation and the parent and 100% owner of United Sporting, also a Delaware corporation. (Compl. ¶¶ 14, 19.) United Sporting was the 100% owner of Ellett, a South Carolina limited liability company with its principal place of business in South Carolina. (*Id.* ¶ 19.) The Complaint alleges that Grant was the transferee of \$955,070.13 in fraudulent transfers between 2012 and 2013 from either Ellett or SportCo, even though there is no allegation that Grant was an equity holder in Ellett. (*Id.* ¶¶ 41, 71-90.)

Prospect was a party to the Second Lien Loan Agreement and First Amendment (collectively the “Loan Agreements”), and had full knowledge that the funds from the Loan Agreements would be used, for among other things, distributions to Grant, Wellspring, and the other equity holders. “A fraudulent transfer is not void, but voidable; thus, it can be ratified by a creditor who is then estopped from seeking its avoidance.” *In re Best Products Co.*, 168 B.R. 35, 57 (Bankr. S.D.N.Y 1994). Where a creditor participates in and authorizes the transfer of certain assets to a third party, the creditor is estopped from attacking the transfer. *See, e.g., In re Dunn*, 2006 WL 6810930, at *8 (B.A. P. 9th Cir. Oct. 31, 2006) (holding that creditor could not invalidate a transfer where he executed a resolution giving rise to the transfer); *Victory Med. Ctr. Beaumont, L.P. v. Connecticut Gen. Life Ins. Co.*, No. 1:17-CV-48, 2018 WL 3467915, at *11 (E.D. Tex. July 17, 2018) (dismissing fraudulent conveyance action under theories of ratification, estoppel, and quasi-estoppel where creditor signed the instrument effectuating transfer); *In re Crescent Res. Litig Trust ex rel Bernstein v. Duke Energy Corp.*, 500 B.R. 464, 479 (W.D. Tx 2013) (barring fraudulent conveyance claim where lenders participated in the transaction with full knowledge of transaction). Because Prospect knew that the loans would be used to pay dividends to Grant,

Wellspring, and others, and because Prospect consented to the payment of dividends, it is barred from bringing any claims, and so is the Trustee. *See U.S. Bank Nat'l Ass'n v. Verizon Commc'ns Inc.*, 479 B.R. 405, 411 (N.D. Tex. 2012) (barring creditors' fraudulent conveyance claim where they participated in the challenged transactions).

Ultimately, Prospect is the only creditor that the trustee has identified as a possible triggering creditor, and there is nothing in the Complaint to indicate that there are other creditors who could serve as a triggering creditor. Therefore, because Prospect is barred from asserting the fraudulent conveyance claim and there are no other potential triggering creditors, the Trustee's claim fails as a matter of law.

2. The Trustee's fraudulent conveyance claim is controlled by New York law.

Both the Second Lien Loan Agreement and its First Amendment included a New York choice of law provision (*See Exh. 1*, Second Lien Loan Agreement § 14.20; *See Exh. 2*, First Amendment ¶ 8). , Prospect and Summit further represented and agreed that New York law would govern “any claims sounding in contract or tort arising out of the subject matter” of the Agreement. (*Exh. 3*, Second Amendment ¶ 1(b) (amending § 14.20.1 of Second Lien Loan Agreement)). The Wellspring Defendants and the other shareholders, including Grant, are third-party beneficiaries of the Loan Agreements' choice of law provision designating New York law. The Loan Agreements expressly contemplated that the shareholders would receive a benefit from the Loan Agreements by receiving dividend payments from loan proceeds. Specifically, the Loan Agreements state that the loan proceeds were intended for further distribution to SportCo and Wellspring *and the other shareholders of SportCo*. (*See* Second Lien Loan Agreement , *Exh. 1* at §1.1.3.) Grant, as one of the other shareholders of SportCo was clearly an intended recipient of

the benefits conferred by the Loan Agreement. Therefore, Grant is entitled to enforce the contractual choice of law provision under the Loan Agreements.

3. The Trustee cannot plead a claim for fraudulent conveyance as to Grant under New York law.

The Trustee has failed to state a claim for fraudulent conveyance under New York Law. However, even if given the opportunity, the Trustee cannot in good faith plead the elements required to recover under a fraudulent conveyance claim. In order for a transfer to be constructively fraudulent under New York's Debtor and Creditor Law ("DCL"), the Trustee must prove that the transfer was made "without fair consideration" *and* one of the following conditions is met: (1) the transferor is insolvent or will be rendered insolvent by the transfer in question; (2) the transferor is engaged in or is about to engage in a business transaction for which its remaining property constitutes "unreasonably small capital"; or (3) the transferor believes that it will incur debts beyond its ability to pay. DCL §§ 273–75.

First, the Complaint is devoid of any allegation that the Debtors were insolvent, and in fact, it contains numerous allegations to the contrary. (See Compl. ¶¶ 31–32 (alleging that the Debtors were solvent for years after the 2012 and 2013 transactions).) In fact, the Trustee alleges that in the three to four years after the transfers were made, the Debtors "achieved record sales" and earned significant revenues. (*Id.* ¶ 31.) The Trustee further cites the Debtors' position among firearms distributors and broad customer base. (*Id.* ¶ 32.) However, the Complaint does not allege or even hint that the Debtors were insolvent following the 2012 and 2013 transactions or otherwise struggling in the years following. As a result, the Trustee's allegations fail to state a claim for fraudulent conveyance under New York law. See, e.g., *Ray v. Ray*, 2019 WL 1649981, at *6 (S.D.N.Y. Mar. 28, 2019), *aff'd*, No. 19-1124-CV, 2020 WL 374556 (2d Cir. Jan. 23, 2020) (dismissing DCL § 273 claim for failure to plead that defendant's assets were less than probable

liabilities and DCL § 275 claim for failure to plead that defendant held a “subjective belief that she would incur debts beyond her ability to pay at the time the transfers were made”); *Innovative Custom Brands, Inc. v. Minor*, 2016 WL 308805, at *3 (S.D.N.Y. Jan. 25, 2016) (dismissing DCL § 275 claim for failure to plead facts concerning defendants’ subjective intent); *In re Operations NY*, 490 B.R. at 98 (dismissing DCL § 274 claim); *Joslin v. Lopez*, 309 A.D.2d 837, 838 (N.Y. App. Div. 2003).

4. The Trustee has failed to state a claim against Grant under South Carolina law.

In the event that the Court concludes New York does not apply, the Trustee’s claims for fraudulent conveyance still fail under South Carolina law. Based on the allegations in the Amended Complaint, Prospect did not become a creditor of the Debtors until the 2012 and 2013 transactions, and therefore its burden of proof for a fraudulent conveyance claim is different from a preexisting creditor. Prospect cannot rely on allegation to support a claim for constructive fraud and instead, must prove actual fraud. *See In re Ducate*, 369 B.R. 251, 258 (D.S.C. 2007) (holding that the standard for avoiding a transfer depends on the status of the creditor). Whereas an existing creditor does not need to prove any evil intent or fraudulent purpose, “subsequent creditors may have conveyances set aside when (1) the conveyance was ‘voluntary,’ that is, without consideration, and (2) it was made with a view to future indebtedness or with an actual fraudulent intent on the part of the grantor to defraud creditors.” *Id.* (quoting *In re J.R. Deans*, 249 B.R. 121, 130-31 (Bankr. D.S.C. 2000)). The Trustee must establish both elements to prevail. *Id.* However, if a subsequent creditor knew or should have known of the alleged transfer before the debt was incurred, then it would be unjust to allow the creditor to avoid the transfer. *Id.* at 260.

It is impossible for the Trustee to escape the plain terms of the 2012 and 2013 Loan Agreements whereby Prospect acknowledged and consented to the proceeds being used to fund the alleged fraudulent conveyances. The Trustee has failed to allege actual fraud and would be

hard pressed to do so in light of the express terms of the Agreements. Moreover, Grant's receipt of the dividends was authorized under Delaware law, where SportCo. was incorporated. *See* 8 Del. C. § 170(a) (setting the statutory basis under which distributions may be made). The Complaint does not allege that the distributions were not authorized in accordance with the requirements of Delaware law governing dividend distributions or that the transfers were made by the Debtors with an "intent to defeat, delay or hinder" the Debtors' creditors, and instead, the transfers were disclosed, agreed to, and made openly.

CONCLUSION

Based on the foregoing, Grant requests that the Court dismiss the Amended Complaint and grant such other and further relief as may be just and proper.

By: s/ Mary M. Caskey

Stanley H. McGuffin, District ID 2833

Mary M. Caskey, District ID 10120

PO Box 11889

Columbia, SC 29211

(803) 779.3080 Tel

(803) 765.1243 Fax

Email: smcguffin@hsblawfirm.com

mcaskey@hsblawfirm.com

Attorneys for F. Hewitt Grant

February 19, 2020

THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE, IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN INTERCREDITOR AND SUBORDINATION AGREEMENT (THE "SUBORDINATION AGREEMENT") DATED AS OF SEPTEMBER 28, 2012 BETWEEN PROSPECT CAPITAL CORPORATION, AS SECOND PRIORITY AGENT FOR THE SECOND PRIORITY CREDITORS AND BANK OF AMERICA, N.A., AS SENIOR AGENT FOR THE SENIOR CREDITORS, TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY ELLETT BROTHERS, LLC ("ELLETT"), THE OTHER BORROWERS FROM TIME TO TIME PARTY THERETO (TOGETHER WITH ELLETT, INDIVIDUALLY A "BORROWER" AND COLLECTIVELY THE "BORROWERS"), PURSUANT TO THAT CERTAIN THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT, DATED AS OF SEPTEMBER 28, 2012, BY AND AMONG THE BORROWERS, THE LENDERS FROM TIME TO TIME PARTY THERETO AND BANK OF AMERICA, N.A., AS AGENT, AND THE INDEBTEDNESS OWED BY ANY GUARANTORS UNDER GUARANTIES WITH RESPECT THERETO, AS SUCH AGREEMENTS HAVE BEEN AND HEREAFTER MAY BE AMENDED, RESTATED, SUPPLEMENTED, EXTENDED, RENEWED, REFINANCED, REPLACED OR OTHERWISE MODIFIED AND TO ANY INDEBTEDNESS REFINANCING THE INDEBTEDNESS UNDER SUCH AGREEMENTS AS CONTEMPLATED BY THE SUBORDINATION AGREEMENT; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT.

ELLETT BROTHERS, LLC,
EVANS SPORTS, INC.,
JERRY'S SPORTS, INC.,
SIMMONS GUN SPECIALTIES, INC.,
BONITZ BROTHERS, INC.
and
OUTDOOR SPORTS HEADQUARTERS, INC.,

as Borrowers

SECOND LIEN LOAN AND SECURITY AGREEMENT

Dated: September 28, 2012

THE FINANCIAL INSTITUTIONS
PARTY HERETO FROM TIME TO TIME, as Lenders
and
PROSPECT CAPITAL CORPORATION, as Agent

TABLE OF CONTENTS

	Page
SECTION 1. CREDIT FACILITY	1
1.1 Term Loan.....	1
1.2 Notes	2
SECTION 2. INTEREST, FEES AND CHARGES	2
2.1 Interest.....	2
2.2 Fees	3
2.3 Computation of Interest and Fees	3
2.4 Reimbursement Obligations.....	3
2.5 Bank Charges	4
2.6 Increased Costs; Capital Adequacy	5
2.7 Maximum Interest.....	5
2.8 Mitigation.....	7
SECTION 3. RESERVED.....	7
SECTION 4. PAYMENTS	7
4.1 General Payment Provisions	7
4.2 Reserved.....	7
4.3 Mandatory and Optional Prepayments.....	7
4.4 Pro Rata Treatment and Payments.....	9
4.5 Marshaling; Payments Set Aside	9
4.6 Allocation of Payments.....	10
4.7 Application of Payments and Collateral Proceeds.....	10
4.8 Reserved.....	11
4.9 Payments Free of Taxes	11
4.10 Lender Tax Information.....	12
4.11 Nature and Extent of Each Borrower's Liability	13
SECTION 5. RESERVED.....	16
SECTION 6. COLLATERAL	16
6.1 Grant of Security Interest.....	16
6.2 Lien on Deposit Accounts.....	17

TABLE OF CONTENTS (continued)

	Page
6.3 Real Estate Collateral.....	17
6.4 Other Collateral.....	17
6.5 No Assumption of Liability	18
6.6 Lien Perfection; Further Assurances.....	18
6.7 Foreign Subsidiary Stock.....	18
SECTION 7. COLLATERAL ADMINISTRATION.....	19
7.1 General Provisions	19
7.2 Administration of Accounts.....	21
7.3 Administration of Inventory	21
7.4 Administration of Equipment	22
7.5 Reserved.....	22
7.6 Administration of Deposit Accounts	22
SECTION 8. REPRESENTATIONS AND WARRANTIES.....	23
8.1 General Representations and Warranties	23
8.2 Survival of Representations and Warranties.....	28
SECTION 9. COVENANTS AND CONTINUING AGREEMENTS.....	29
9.1 Affirmative Covenants.....	29
9.2 Negative Covenants	33
9.3 Financial Covenants.....	40
SECTION 10. CONDITIONS PRECEDENT	41
10.1 Conditions Precedent to Initial Credit Extension.....	41
10.2 Inapplicability of Conditions	44
SECTION 11. EVENTS OF DEFAULT; RIGHTS AND REMEDIES ON DEFAULT.....	44
11.1 Events of Default	44
11.2 Acceleration of Obligations	46
11.3 Other Remedies.....	47
11.4 Setoff.....	48
11.5 Remedies Cumulative; No Waiver	49
SECTION 12. AGENT	49

TABLE OF CONTENTS
(continued)

	Page
12.1 Appointment, Authority and Duties of Agent.....	49
12.2 Agreements Regarding Collateral.....	51
12.3 Reliance By Agent	51
12.4 Action Upon Default.....	52
12.5 Ratable Sharing.....	52
12.6 Indemnification of Agent Indemnitees	53
12.7 Limitation on Responsibilities of Agent	54
12.8 Successor Agent and Co-Agents.....	54
12.9 Consents, Amendments and Waivers	55
12.10 Due Diligence and Non-Reliance	56
12.11 Representations and Warranties of Lenders	57
12.12 Several Obligations	57
12.13 Individual Capacities	57
12.14 No Third Party Beneficiaries	57
12.15 Notice of Transfer	57
12.16 Remittance of Payments and Collections	57
SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS AND PARTICIPATIONS	58
13.1 Successors and Assigns.....	58
13.2 Participations.....	58
13.3 Assignments.....	59
SECTION 14. MISCELLANEOUS	60
14.1 Power of Attorney.....	60
14.2 General Indemnity	61
14.3 Survival of All Indemnities.....	62
14.4 Modification of Agreement.....	62
14.5 Severability	62
14.6 Cumulative Effect; Conflict of Terms	63
14.7 Execution in Counterparts.....	63
14.8 Consent	63

TABLE OF CONTENTS
(continued)

	Page
14.9 Notices	63
14.10 Performance of Borrowers' Obligations.....	64
14.11 Credit Inquiries	65
14.12 Time of Essence	65
14.13 Indulgences Not Waivers.....	65
14.14 Entire Agreement; Appendix A, Exhibits and Schedules.....	65
14.15 Interpretation.....	65
14.16 Obligations of Lenders Several.....	65
14.17 Advertising and Publicity	66
14.18 Confidentiality	66
14.19 Patriot Act Notice	67
14.20 Governing Law; Consent to Forum	67
14.21 Waivers by Borrowers	67
14.22 Binding Effect; Further Assurances.....	68

LIST OF APPENDICES, EXHIBITS AND SCHEDULES

Appendix A	General Definitions
Exhibit A	Form of Note
Exhibit B	Form of Compliance Certificate
Exhibit C	Form of Assignment and Acceptance
Exhibit D	Form of Notice
Schedule 7.1.1	Borrowers' Business Locations
Schedule 7.1.2	Insurance
Schedule 7.6	Deposit Accounts
Schedule 8.1.1	Jurisdictions in which Borrowers and each Subsidiary is Authorized to do Business
Schedule 8.1.4	Capital Structure of Borrowers
Schedule 8.1.5	Corporate Names
Schedule 8.1.12	Surety Obligations
Schedule 8.1.13	Tax Identification Numbers of Borrowers and Subsidiaries
Schedule 8.1.15	Patents, Trademarks, Copyrights and Licenses
Schedule 8.1.18	Contracts Restricting Borrowers' Right to Incur Debts
Schedule 8.1.19	Litigation
Schedule 8.1.21	Capitalized and Operating Leases
Schedule 8.1.22	Pension Plans
Schedule 8.1.24	Labor Contracts
Schedule 8.1.28	Disregarded Subsidiaries
Schedule 9.2.5	Permitted Liens
Schedule 9.2.8	Restrictions on Upstream Payments

SECOND LIEN LOAN AND SECURITY AGREEMENT

THIS SECOND LIEN LOAN AND SECURITY AGREEMENT is made on September 28, 2012, by and among **ELLETT BROTHERS, LLC** ("**EB**"), a South Carolina limited liability company, **EVANS SPORTS, INC.** ("**Evans**"), a South Carolina corporation, **JERRY'S SPORTS, INC.** ("**Jerry**"), a Delaware corporation, **SIMMONS GUN SPECIALTIES, INC.** ("**Simmons**"), a Delaware corporation, **BONITZ BROTHERS, INC.** ("**Bonitz**"), a Delaware corporation, **OUTDOOR SPORTS HEADQUARTERS, INC.** ("**Outdoor**"), a Delaware corporation, each with its chief executive office and principal place of business at 267 Columbia Avenue, Chapin, South Carolina; the various financial institutions listed on the signature pages hereof and their respective successors and permitted assigns which become "Lenders" as provided herein; and **PROSPECT CAPITAL CORPORATION**, in its capacity as collateral and administrative agent for Lenders pursuant to **Section 12** hereof (together with its successors in such capacity, "**Agent**"). Capitalized terms used in this Agreement have the meanings assigned to them in Appendix A, General Definitions.

Recitals:

Each Borrower has requested that Lenders enter into this Agreement to provide funds to the Borrowers to be used solely for payment of a portion of the Wellspring Debt, payment of the Closing Date Distribution (as such terms are defined herein) and payment of transaction fees and expenses in connection therewith. In order to utilize the financial powers of each Borrower in the most efficient and economical manner, and in order to facilitate the financing of each Borrower's needs, Lenders are making loans to Borrowers hereunder on a combined basis and in accordance with the provisions hereinafter set forth.

Each Borrower has agreed to guarantee the obligations of each of the other Borrowers under this Agreement and each of the other Loan Documents.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. CREDIT FACILITY

1.1 Term Loan.

1.1.1 **Making of Term Loan.** Subject to the terms and conditions hereof and in reliance upon the representations and warranties set forth herein and in the other Loan Documents, each Lender severally agrees to make available to the Borrowers on the Closing Date a principal amount equal to such Lender's Commitment Percentage of the aggregate principal amount of the Term Loans in an original amount equal to \$170,000,000 on the Closing Date, for the purposes hereinafter set forth. Amounts borrowed under this **Section 1.1** which are repaid or prepaid may not be reborrowed.

1.1.2 **Repayment of Term Loan.** The Borrowers shall repay to the Lenders the aggregate outstanding principal balance of the Term Loans on the Maturity Date.

1.1.3 Use of Proceeds. Proceeds of the Term Loans shall be used by Borrowers solely for one or more of the following purposes: (i) to make a one-time Distribution to Holdings (for further Distribution to SportCo) to repay a portion of the Wellspring Debt on the Closing Date; (ii) to pay the Closing Date Distribution on the Closing Date, and (iii) to pay the fees and transaction expenses associated with the closing of the Transactions described herein. In no event may any Term Loan proceeds be used by Borrowers to make a contribution to the equity of any Subsidiary which is not a Borrower, to purchase or to carry, or to reduce, retire or refinance any Debt incurred to purchase or carry any Margin Stock or for any related purpose that violates the provisions of Regulations T, U or X of the Board of Governors.

1.2 Notes.

The Borrower's obligation to repay to each Lender such Lender's Commitment Percentage of the Term Loans shall be evidenced by a Note made payable to such Lender in substantially the form of **Exhibit A**.

SECTION 2. INTEREST, FEES AND CHARGES

2.1 Interest.

2.1.1 Interest Rate. Subject to **Section 2.1.3** and **Section 2.7**, interest shall accrue on the outstanding principal balance of the Term Loans from the Closing Date and until the principal amount of the Term Loans has been repaid in full at a rate per annum equal to the greater of (x) the LIBOR Rate plus eleven percent (11.00%) and (y) twelve and three-quarters percent (12.75%). Any determination of the interest rate by the Agent shall be conclusive and binding on the Borrowers in the absence of manifest error.

2.1.2 Interest Payments. The Borrowers shall pay to the Lenders accrued but unpaid interest in cash (i) in arrears on each Interest Payment Date, (ii) on the principal amount paid or prepaid on the date of any principal payment or prepayment of the Term Loans made pursuant to **Section 4.3** and (iii) on the Maturity Date.

2.1.3 Default Rate of Interest. Borrowers shall pay interest at a rate per annum equal to the Default Rate (i) with respect to any portion of the Obligations (and, to the extent permitted by Applicable Law, all past due interest) that is not paid on the due date thereof (whether due at stated maturity, on demand, upon acceleration or otherwise) until paid in full; and (ii) with respect to all of the Obligations (and, to the extent permitted by Applicable Law, all past due interest) upon the earlier to occur of (x) Borrowers' receipt of notice from Agent or Required Lenders' of the election to charge the Default Rate based upon the existence of any Default or Event of Default (which notice Agent may elect to send and shall send at the direction of Required Lenders), whether or not acceleration or demand for payment of the Obligations has been made or (y) the commencement by or against Borrower of an Insolvency Proceeding whether or not under the circumstances described in clauses (i) or (ii) hereof. To the fullest extent permitted by Applicable Law, the Default Rate shall apply and accrue on any judgment entered with respect to any of the Obligations and to the unpaid principal amount of the Obligations during any Insolvency Proceeding of a Borrower. Borrowers acknowledge that the cost and expense to Agent and each Lender attendant upon the occurrence of an Event of Default

are difficult to ascertain or estimate and that the Default Rate is a fair and reasonable estimate to compensate Agent and Lender for such added cost and expense. Interest accrued at the Default Rate shall be due and payable on demand.

2.2 Fees.

Pursuant to the Structuring Fee Letters, Borrowers shall pay to each Lender or its designee for its own account a structuring fee of two and one quarter percent (2.25%) of the aggregate principal amount of the Term Loans advanced by such Lender on the Closing Date. Such fee shall be fully earned by the Lenders on the date hereof and shall not be subject to rebate, refund or proration. Such fee shall be deemed to be compensation for services and shall not be deemed to be interest or any other charge for the use, forbearance or detention of money.

2.3 Computation of Interest and Fees.

All fees and other charges provided for in this Agreement that are calculated as a per annum percentage of any amount and all interest shall be calculated daily and shall be computed on the actual number of days elapsed over a year of three hundred and sixty (360) days. Subject to **Section 4.7**, for purposes of computing interest and other charges hereunder, all payments received by a Lender shall be deemed applied by such Lender on account of the Obligations on the Business Day that such Lender receives such payments in immediately available funds.

2.4 Reimbursement Obligations.

2.4.1 Borrowers shall reimburse Agent, Summit and Prospect, for so long as either is an Original Lender for, (and, with respect during any period that an Event of Default then exists, each Lender) or, at the request of Agent (or, if applicable, such Lender); pay directly, all reasonable legal, accounting, appraisal and other reasonable fees and out-of-pocket expenses incurred by Agent, such Original Lender or, if applicable, any other Lender in connection with (i) the negotiation and preparation of any of the Loan Documents, any amendment or modification thereto, any waiver of any Default or Event of Default thereunder, or any restructuring or forbearance with respect thereto; (ii) the administration of the Loan Documents and the transactions contemplated thereby, to the extent that such fees and expenses are expressly provided for in this Agreement or any of the other Loan Documents; (iii) action taken to perfect or maintain the perfection or priority of any of Agent's Liens with respect to any of the Collateral; (iv) any effort to verify, protect, preserve, or restore any of the Collateral or to collect, sell, liquidate or otherwise dispose of or realize upon any of the Collateral; (v) any litigation, contest, dispute, suit, proceeding or action (whether instituted by or against Agent, any Lender, any Obligor or any other Person) in any way arising out of or relating to any of the Collateral (or the validity, perfection or priority of any of Agent's Liens thereon), any of the Loan Documents or the validity, allowance or amount of any of the Obligations; (vi) the protection or enforcement of any rights or remedies of Agent or any Lender in any Insolvency Proceeding; (vii) any other action taken by Agent or any Lender to enforce any of the rights or remedies of Agent or such Lender against any Obligor or any Account Debtors to enforce collection of any of the Obligations or payments with respect to any of the Collateral; and (viii) the engagement by Agent of professionals to determine the value of Inventory. In addition to the foregoing, the Borrowers agree to pay to the Agent the allocated, reasonable and documented costs, fees and

expenses of internal counsel in connection with any amendment, waiver or consent delivered hereunder (but in any event not to exceed \$5,000 for any single amendment, waiver or consent), in addition to any other applicable fee that may be payable in connection with any such amendment, waiver or consent. All amounts chargeable to Borrowers under this **Section 2.4** shall constitute Obligations that are secured by all of the Collateral and shall be payable on demand to Agent. Borrowers shall also reimburse Agent for expenses incurred by Agent in its administration of any of the Collateral to the extent and in the manner provided in **Section 7** hereof or in any of the other Loan Documents. The foregoing shall be in addition to, and shall not be construed to limit, any other provision of any of the Loan Documents regarding the reimbursement by Borrowers of costs, expenses or liabilities suffered or incurred by Agent or any Lender.

2.4.2 If at any time Agent or (with the consent of Agent) any Lender shall indemnify any Person against losses or damages that such Person may suffer or incur in its dealings or transactions with Borrowers, or shall guarantee any liability or obligation of a Borrower to such Person, or otherwise shall provide assurances of a Borrower's payment or performance under any agreement with such Person related to or arising in connection with this Agreement, including indemnities, guaranties or other assurances of payment or performance given by Agent or any Lender with respect to any thereof, then the Contingent Obligation of Agent or any Lender providing any such indemnity, guaranty or other assurance of payment or performance, together with any payment made or liability incurred by Agent or any Lender in connection therewith, shall constitute Obligations that are secured by the Collateral and Borrowers shall repay, on demand, any amount so paid or any liability incurred by Agent or any Lender in connection with any such indemnity, guaranty or assurance. Nothing herein shall be construed to impose upon Agent or any Lender any obligation to provide any such indemnity, guaranty or assurance. The foregoing agreement of Borrowers shall apply whether or not such indemnity, guaranty or assurance is in writing or oral and regardless of a Borrower's knowledge of the existence thereof, and shall be in addition to any provision of the Loan Documents regarding reimbursement by Borrowers of costs, expenses or liabilities suffered or incurred by Agent or any Lender. To the extent that Agent or any Lender agrees to provide any such indemnity, guaranty or other assurance of payment or performance for the benefit of Borrower under this **Section 2.4**, such party agrees to use reasonable efforts to timely notify Borrowers of such agreement; provided, however, that the failure to so notify Borrowers shall in no manner impair Borrowers' reimbursement obligations hereunder.

2.5 Bank Charges.

Borrowers shall pay to Agent, **on demand**, any and all fees, costs or expenses which Agent or any Lender pays to a bank or other similar institution (including any fees paid by Agent or any Lender to any Participant) arising out of or in connection with the depositing for collection by Agent or any Lender of any Payment Item received or delivered to Agent or any Lender on account of the Obligations. Borrowers acknowledge and agree that Agent may charge such costs, fees and expenses to Borrowers based upon Agent's good faith estimate of such costs, fees and expenses as they are incurred by Agent or any Lender.

2.6 Increased Costs; Capital Adequacy. To the extent applicable to a Lender:

2.6.1 Change in Law. If any Change in Law shall:

i. impose, modify or deem applicable any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

ii. subject any Lender to any Tax with respect to any Term Loan or Loan Document, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by **Section 4.9** and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

iii. impose on any Lender any other condition, cost or expense affecting any Term Loan or Loan Document;

and the result thereof shall be to increase the cost to such Lender of making or maintaining any Term Loan, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered. A certificate as to the amount of such increased cost, submitted to Borrowers by such Lender, shall be final, conclusive and binding for all purposes, absent manifest error.

2.6.2 Capital Adequacy. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or holding company's capital as a consequence of this Agreement, or such Lender's Term Loans, to a level below that which such Lender or holding company could have achieved but for such Change in Law (taking into consideration such Lender's and holding company's policies with respect to capital adequacy), then, subject to **Section 2.8**, from time to time Borrowers will pay to such Lender such additional amount or amounts as will compensate it or its holding company for any such reduction suffered.

2.6.3 Compensation. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but Borrowers shall not be required to compensate a Lender for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies EB of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof). For purposes of this **Section 2.6**, all references to a Lender shall be deemed to include any bank holding company or bank parent of such Lender.

2.7 Maximum Interest.

Regardless of any provision contained in any of the Loan Documents, in no contingency or event whatsoever shall the aggregate of all amounts that are contracted for, charged or received by Agent and Lenders pursuant to the terms of this Agreement or any of the other Loan Documents and that are deemed interest under Applicable Law exceed the highest rate permissible under any Applicable Law. No agreements, conditions, provisions or stipulations contained in this Agreement or any of the other Loan Documents or the exercise by Agent of the right to accelerate the payment or the maturity of all or any portion of the Obligations, or the exercise of any option whatsoever contained in any of the Loan Documents, or the prepayment by Borrowers of any of the Obligations, or the occurrence of any contingency whatsoever, shall entitle Agent or any Lender to charge or receive in any event, interest or any charges, amounts, premiums or fees deemed interest by Applicable Law (such interest, charges, amounts, premiums and fees referred to herein collectively as “Interest”) in excess of the Maximum Rate and in no event shall Borrowers be obligated to pay Interest exceeding such Maximum Rate, and all agreements, conditions or stipulations, if any, which may in any event or contingency whatsoever operate to bind, obligate or compel Borrowers to pay Interest exceeding the Maximum Rate shall be without binding force or effect, at law or in equity, to the extent only of the excess of Interest over such Maximum Rate. If any Interest is charged or received in excess of the Maximum Rate (“Excess”), each Borrower acknowledges and stipulates that any such charge or receipt shall be the result of an accident and bona fide error, and such Excess, to the extent received, shall be applied to the Obligations, and the balance, if any, returned to Borrowers, it being the intent of the parties hereto not to enter into a usurious or otherwise illegal relationship. The right to accelerate the maturity of any of the Obligations does not include the right to accelerate any Interest that has not otherwise accrued on the date of such acceleration, and Agent and Lenders do not intend to collect any unearned Interest in the event of any such acceleration. Borrowers recognize that, with fluctuations in the rates of interest set forth in **Section 2.1.1** of this Agreement or in any Term Loan, and the Maximum Rate, such an unintentional result could inadvertently occur. All monies paid to Agent or any Lender hereunder or under any of the other Loan Documents, whether at maturity or by prepayment, shall be subject to any rebate of unearned Interest as and to the extent required by Applicable Law. By the execution of this Agreement, each Borrower covenants that (i) the credit or return of any Excess shall constitute the acceptance by Borrowers of such Excess, and (ii) such Borrower shall not seek or pursue any other remedy, legal or equitable, against Agent or any Lender, based in whole or in part upon contracting for, charging or receiving any Interest in excess of the Maximum Rate. For the purpose of determining whether or not any Excess has been contracted for, charged or received by Agent or any Lender, all Interest at any time contracted for, charged or received from Borrowers in connection with any of the Loan Documents shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the Obligations. Borrowers, Agent and Lenders shall, to the maximum extent permitted under Applicable Law, (i) characterize any non-principal payment as an expense, fee or premium rather than as Interest and (ii) exclude voluntary prepayments and the effects thereof. The provisions of this **Section 2.7** shall be deemed to be incorporated into every Loan Document (whether or not any provision of this Section is referred to therein). All such Loan Documents and communications relating to any Interest owed by Borrowers and all figures set forth therein shall, for the sole purpose of computing the extent of Obligations, be automatically recomputed by Borrowers, and by any

court considering the same, to give effect to the adjustments or credits required by this **Section 2.7**.

2.8 Mitigation.

To the extent applicable to any Lender party hereto, if such Lender requests compensation under **Sections 2.6**, or if Borrowers are required to pay additional amounts with respect to such Lender under **Section 4.9**, then such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to it or unlawful. Borrowers shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

SECTION 3. BORROWERS' REPRESENTATIVE

3.1 Appointment.

Each Borrower hereby irrevocably appoints EB, and EB agrees to act under this Agreement, as the agent and representative of itself and each other Borrower for all purposes under this Agreement, including receiving notices and communications to Borrowers (or any of them) from Agent. Agent may rely, and shall be fully protected in relying, on any reports, information or any other notice or communication made or given by EB, whether in its own name, on behalf of any Borrower or on behalf of "Borrowers," and Agent shall not have any obligation to make any inquiry or request any confirmation from or on behalf of any other Borrower as to the binding effect on such Borrower of any such report, information, notice or communication, nor shall the joint and several character of Borrowers' liability for the Obligations be affected.

SECTION 4. PAYMENTS

4.1 General Payment Provisions.

All payments (including all prepayments) of principal of and interest on the Term Loans and other Obligations that are payable to Agent or any Lender shall be made to Agent or Lenders, as applicable, in Dollars without any offset or counterclaim and free and clear of (and without deduction for) any present or future Taxes, except as otherwise provided in **Section 4.9**, and in immediately available funds to each Lending Office not later than 12:00 noon (New York City time) on the due date (and payment made after such time on the due date to be deemed to have been made on the next succeeding Business Day). All payments to Lenders shall be made on a Pro Rata basis. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

4.2 Reserved.

4.3 Mandatory and Optional Prepayments.

4.3.1 Prepayment in Full. On or after September 28, 2013, upon not less than ten (10) days' prior written notice to the Agent and the Lenders, which notice shall be irrevocable and shall be delivered no later than 2:00 p.m. (New York City time), the Borrowers shall have the right to prepay the outstanding principal balance of the Term Loans in full, together with accrued but unpaid interest thereon and all other amounts then owing under the Loan Documents, plus the amount of any applicable Prepayment Premium.

4.3.2 Partial Prepayments. On or after September 28, 2013, upon not less than ten (10) days' prior written notice to the Agent and the Lenders, which notice shall be irrevocable and shall be delivered no later than 2:00 p.m. (New York City time), the Borrowers shall have the right to prepay a portion of the outstanding principal balance of the Term Loans, together with accrued but unpaid interest thereon and all other amounts then owing under the Loan Documents, plus the amount of any applicable Prepayment Premium; provided that each partial prepayment of the Term Loans shall be in a minimum principal amount of \$1,000,000 and integral multiples of \$500,000 in excess thereof.

4.3.3 Excess Cash Flow. No later than the date which is ten (10) Business Days after the date on which annual financial statements of the Borrowers are delivered or required to be delivered pursuant to **Section 9.1.3(i)**, beginning with the Fiscal Year ending December 31, 2013, the Borrowers (x) shall deliver to the Agent and the Lenders a written calculation of Excess Cash Flow for the applicable Fiscal Year, certified by a Senior Officer of the Borrowers, and (y) shall prepay the Term Loans in an amount equal to fifty percent (50%) of Excess Cash Flow for such Fiscal Year.

4.3.4 Issuances of Equity. Immediately upon receipt by any Obligor of the proceeds of any Equity Issuance, such Obligor shall prepay the Term Loans in an aggregate amount equal to 100% of the net cash proceeds of such Equity Issuance plus the amount of any applicable Prepayment Premium.

4.3.5 Change of Control. Immediately upon and as a condition to the consummation of the occurrence of a Change of Control, the Borrowers shall prepay the outstanding principal balance of the Term Loans, together with accrued but unpaid interest thereon and all other amounts then owing under the Loan Documents, plus the amount of any applicable Prepayment Premium.

4.3.6 No Implied Consent. The provisions of this **Section 4.3** shall not operate as, or be deemed to constitute, the consent of the Agent or any Lender to any transaction or action to the extent that such transaction or action giving rise to any prepayment is not otherwise permitted by the terms of the Loan Documents.

4.3.7 Reserved.

4.3.8 Proceeds of Sale, Loss, Destruction or Condemnation of Collateral.

Except as provided in **Section 9.2.10**, if any Obligor or any of their respective Subsidiaries sells any of the Collateral, or if a casualty occurs with respect to any of the Collateral, such Obligor or Subsidiary shall, unless otherwise agreed by Lenders, pay to each Lender its Pro Rata share, as and when received by such Obligor or such Subsidiary and as a mandatory prepayment of the Term Loans, as herein provided, of a sum equal to (x) the proceeds (including insurance payments and condemnation awards but net of costs and taxes incurred in connection with such sale or event) ("Sale Proceeds") received by such Obligor or such Subsidiary from such sale or casualty, minus (y) the amount of such proceeds actually paid to the First Priority Lenders to reduce First Priority Debt in accordance with the terms of the First Priority Loan Documents.

4.3.9 Proceeds from Issuance of Additional Debt.

If any Obligor or any of their respective Subsidiaries issues any Debt for Money Borrowed (other than Debt permitted under **Section 9.2.3**), such Obligor or such Subsidiary shall pay to each Lender its Pro Rata share, when and as received by such Obligor or Subsidiary and as a mandatory prepayment of the Obligations, a sum equal to (x) 100% of the net cash proceeds to such Obligor of the issuance of such Debt, minus (y) the amount of such proceeds actually paid to the First Priority Lenders to reduce First Priority Debt in accordance with the terms of the First Priority Loan Documents.

4.3.10 Payment Restrictions.

(i) Notwithstanding anything herein to the contrary, no prepayment of principal pursuant to **Section 4.3.3** shall be required to be made, and such failure shall not constitute a Default or an Event of Default, if and to the extent, any such payment is prohibited by the terms of the First Priority Loan Agreement or the Subordination Agreement, unless the First Priority Agent shall have consented in writing to such payment prior to the making thereof.

(ii) If at any time subsequent to the imposition of a blockage on any such payments or prepayments pursuant to clause (i) immediately above, such payments and prepayments are no longer prohibited, the Borrower shall immediately pay such previously blocked payments and prepayments in the maximum amount then permitted under the First Priority Loan Agreement and the Subordination Agreement.

4.4 Pro Rata Treatment and Payments.

4.4.1 Subject to **Section 4.6**, each payment or prepayment made hereunder (other than any voluntary prepayment made pursuant to **Section 4.3.2**) shall be applied, first, to the payment of any fees, costs or expenses then due and owing by the Borrowers to the Agent and the Lenders, second, to the payment of accrued but unpaid interest on the outstanding principal balance of the Term Loans, and third, to the payment of unpaid principal.

4.4.2 Subject to **Section 4.4**, any partial prepayments made pursuant to **Section 4.3.2** shall be paid Pro Rata to each Lender.

4.5 Marshaling; Payments Set Aside.

4.5.1 Marshaling. None of Agent or any Lender shall be under any obligation to marshal any assets in favor of a Borrower or any other Obligor or against or in payment of any or all of the Obligations. To the extent that Borrowers make a payment or payments to Agent or Lenders or any of such Persons receives payment from the proceeds of any Collateral or exercises its right 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 Person, then to the extent of any loss by Agent or Lenders, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment or proceeds had not been made or received and any such enforcement or setoff had not occurred. The provisions of the immediately preceding sentence of this **Section 4.5** shall survive the Full Payment of all Obligations.

4.5.2 Erroneous Allocation. Agent shall not be liable for any allocation or distribution of payments made by it in good faith and, if any such allocation or distribution is subsequently determined to have been made in error, the sole recourse of any Lender to whom payment was due but not made shall be to recover from the other Lenders any payment in excess of the amount to which such other Lenders are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

4.6 Allocation of Payments

Upon the occurrence and during the continuance of an Event of Default, the Agent may, and at the direction of the Required Lenders shall, require that any amounts collected or received by the Agent or any Lender on account of the Obligations shall be applied by the Lenders in accordance with clauses “FIRST” through “SIXTH” below. Notwithstanding any other provision of this Agreement to the contrary, upon the acceleration of the Obligations in accordance with **Section 11.2**, all amounts collected or received by the Agent or any Lender on account of the Obligations or in respect of the Collateral shall be applied by the Lenders as follows:

FIRST, to the payment of all costs and expenses of the Agent (including fees, expenses and disbursements of one counsel and one consultancy firm for all Lenders) in connection with enforcing the rights of the Agent and/or the Lenders under the Loan Documents, exercising any remedies under the Loan Documents or otherwise with respect to the Obligations, including repayment of any protective advances made by the Agent with respect to the Collateral under or pursuant to the terms of the Security Documents;

SECOND, to the payment of any outstanding fees owing to the Agent;

THIRD, to the payment of all costs and expenses of the Lenders (including fees, expenses and disbursements of one counsel and one consultancy firm) in connection with enforcing its rights under the Loan Documents or otherwise with respect to the Obligations owing to such Lender;

FOURTH, to the payment of all of the Obligations consisting of outstanding fees owing to the Lenders and any accrued but unpaid interest;

FIFTH, to the payment of the outstanding principal amount of the Obligations;

SIXTH, to all other Obligations and other obligations which shall have become due and payable under the Loan Documents or otherwise and not repaid pursuant to clauses “FIRST” through “FIFTH” above; and

SEVENTH, the payment of the surplus, if any, to the Borrowers or to whomsoever a court of competent jurisdiction shall determine to be entitled thereto.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category and (ii) each Lender shall receive a pro rata portion of such amount, based on the value of the aggregate amount of Term Loans held by each such Lender, available to be applied pursuant to clauses “FOURTH”, “FIFTH” and “SIXTH” above.

4.7 Application of Payments and Collateral Proceeds.

All payments received by a Lender by 2:00 p.m., New York, New York time, on any Business Day shall be deemed received on that Business Day. All payments received by a Lender after 2:00 p.m., New York, New York time, on any Business Day shall be deemed received on the following Business Day. Each Borrower irrevocably waives the right to direct the application of any and all payments and Collateral proceeds at any time or times hereafter received by Agent or any Lender from or on behalf of such Borrower, and such Borrower does hereby irrevocably agree that Agent shall have the continuing exclusive right to apply and reapply any and all such payments and Collateral proceeds received at any time or times hereafter by Agent or its agent against the Obligations, in such manner as Agent may deem advisable.

4.8 Reserved.

4.9 Payments Free of Taxes.

4.9.1 Payments Free of Taxes. All payments by Obligor of Obligations shall be free and clear of and without reduction for any Taxes, except as otherwise provided in this **Section 4.9.1**. If Applicable Law requires any Obligor or Lender to withhold or deduct any Tax (including backup withholding or withholding Tax), Obligor or Lender shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with Applicable Law and the withholding or deduction shall be based on information provided pursuant to **Section 4.10**. If the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by Borrowers shall be increased so that Agent or Lender, as applicable, receives an amount equal to the sum it would have received if no such withholding or deduction (including deductions applicable to additional sums payable under this Section) had been made. Without limiting the foregoing, Borrowers shall timely pay all Other Taxes to the relevant Governmental Authorities.

4.9.2 Payment. Borrowers shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) Agent and Lenders for any Indemnified Taxes or Other

Taxes (including those attributable to amounts payable under this Section) withheld or deducted by any Obligor or Lender, or paid by any Lender, with respect to any Obligations or Loan Documents, whether or not such Taxes were properly asserted by the relevant Governmental Authority, and including all penalties, interest and reasonable expenses relating thereto, as well as any amount that a Lender fails to pay indefeasibly to Agent under **Section 4.10**. A certificate as to the amount of any such payment or liability delivered to EB by a Lender shall be conclusive, absent manifest error. As soon as practicable after any payment of Taxes by a Borrower, EB shall deliver to the affected Lender a receipt from the Governmental Authority or other evidence of payment satisfactory to such Lender.

4.9.3 Refunds. If a Lender shall become aware that it is entitled to claim a refund from a Governmental Authority in respect of Indemnified Taxes or Other Taxes as to which it has been indemnified by Borrowers or with respect to which Borrowers have paid additional amounts pursuant to this **Section 4**, it promptly shall notify Borrowers of the availability of such refund claim and shall make a timely claim to such taxation authority for such refund at Borrowers' expense. If a Lender receives a refund (including pursuant to a claim for refund made pursuant to the preceding sentence) in respect of any Indemnified Taxes or Other Taxes as to which it has been indemnified by Borrowers or with respect to which Borrowers have paid additional amounts pursuant to this **Section 4**, it shall within 30 days from the date of such receipt pay over the amount of such refund to Borrowers, net of all reasonable out-of-pocket expenses of such Lender and without interest (other than interest paid by the relevant taxation authority with respect to such refund); provided that Borrowers, upon the request of such Lender, agree to repay the amount paid over to Borrowers (plus penalties, interest or other reasonable charges) to such Lender in the event such Lender is required to repay such refund to such taxation authority. Notwithstanding anything to the contrary in this Section, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

4.10 Lender Tax Information.

4.10.1 Status of Lenders. Each Lender shall deliver documentation and information to Agent and EB, at the times and in form required by Applicable Law or reasonably requested by Agent or EB, sufficient to permit Agent or Borrowers to determine (a) whether or not payments made with respect to Obligations are subject to Taxes, (b) if applicable, the required rate of withholding or deduction, and (c) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes for such payments or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.

4.10.2 Documentation. If any Foreign Lender is entitled to any exemption from or reduction of withholding tax for payments with respect to the Obligations, it shall deliver to EB, on or prior to the date on which it becomes a Lender hereunder (and from time to time

thereafter upon request by EB, but only if such Foreign Lender is legally entitled to do so), (a) IRS Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party; (b) IRS Form W-8ECI; (c) IRS Form W-8IMY and all required supporting documentation; (d) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, IRS Form W-8BEN and a certificate showing such Foreign Lender is not (i) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (ii) a “10 percent shareholder” of any Obligor within the meaning of section 881(c)(3)(B) of the Code, or (iii) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code; or (e) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in withholding tax, together with such supplementary documentation necessary to allow Borrowers to determine the withholding or deduction required to be made. Each Foreign Lender shall deliver such forms promptly upon the obsolescence, expiration, or invalidity of any form previously delivered by such Foreign Lender.

4.10.3 FATCA. If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to EB at the time or times prescribed by law and at such time or times reasonably requested by EB or Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by EB as may be necessary for Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **Section 4.10.3**, “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

4.10.4 Lender Obligations. Each Lender shall promptly notify Borrowers and Agent of any change in circumstances that would change any claimed Tax exemption or reduction. Each Lender shall indemnify, hold harmless and reimburse (within 10 days after demand therefor) Borrowers and Agent for any Taxes, losses, claims, liabilities, penalties, interest and expenses (including reasonable attorneys’ fees) incurred by or asserted against a Borrower or Agent by any Governmental Authority due to such Lender’s failure to deliver, or inaccuracy or deficiency in, any documentation required to be delivered by it pursuant to this Section. Each Lender authorizes Agent to set off any amounts due to Agent under this Section against any amounts payable to such Lender under any Loan Document.

4.11 Nature and Extent of Each Borrower’s Liability.

4.11.1 Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and Lenders the prompt payment and performance of, all Obligations and all agreements under the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until the Full Payment of all Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or

any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any Lender with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by Agent or any Lender in respect thereof (including the release of any security or guaranty); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any Lender against any Obligor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except the Full Payment of all Obligations.

4.11.2 Waivers.

(i) Each Borrower expressly waives all rights that it may have now or in the future under any Applicable Law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than the Full Payment of all Obligations and waives, to the maximum extent permitted by Applicable Law, any right to revoke any guaranty of any Obligations as long as it is a Borrower. It is agreed among each Borrower, Agent and Lenders that the provisions of this **Section 4.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Term Loans. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral or any Real Estate by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this **Section 4.11**. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any Applicable Laws pertaining to “election of remedies” or otherwise, each Borrower consents to such action and, to the fullest extent permitted by Applicable Law, waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower’s obligation to pay the full amount of the Obligations.

To the fullest extent permitted by Applicable Law, each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. Agent may bid all or a portion of the Obligations at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this **Section 4.11**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

4.11.3 Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Borrower's liability under this **Section 4.11** shall be limited to the greater of (i) all amounts for which such Borrower is primarily liable, as described below, and (ii) such Borrower's Allocable Amount.

(ii) If any Borrower makes a payment under this **Section 4.11** of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this **Section 4.11** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(iii) Nothing contained in this **Section 4.11** shall limit the liability of any Borrower to pay Loans made directly or indirectly to that Borrower (including Loans advanced to any other Borrower and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), LC Obligations relating to Letters of Credit issued to support such Borrower's business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder. Agent

and Lenders shall have the right, at any time in their discretion, to condition Revolver Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of such Loans and Letters of Credit to such Borrower.

4.11.4 Joint Enterprise. Each Borrower has requested that Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to facilitate the Transactions most efficiently and economically. Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. Borrowers acknowledge that Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.

4.11.5 Subordination. Each Borrower hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of all Obligations.

SECTION 5. RESERVED

SECTION 6. COLLATERAL

6.1 Grant of Security Interest.

To secure the prompt payment and performance of all of the Obligations, each Borrower hereby grants to Agent, for the benefit of itself as Agent and for the benefit of the Secured Parties, a continuing security interest in and Lien upon all personal Property of such Borrower, whether now owned or existing or hereafter created, acquired or arising and wheresoever located, including:

- (i) all Accounts;
- (ii) all Goods, including all Inventory and Equipment and fixtures;
- (iii) all Instruments;
- (iv) all Chattel Paper, including Electronic Chattel Paper and Tangible Chattel Paper;
- (v) all Documents;
- (vi) all General Intangibles, including all Intellectual Property, Payment Intangibles and all Software;
- (vii) all Deposit Accounts;

(viii) all Investment Property (but excluding any portion thereof that constitutes Margin Stock unless otherwise expressly provided in any Security Documents);

(ix) all Letter-of-Credit Rights;

(x) all monies now or at any time or times hereafter in the possession or under the control of Agent or a Lender or a bailee or Affiliate of Agent or a Lender, including any Cash Collateral;

(xi) all Supporting Obligations;

(xii) all Commercial Tort Claims, including those shown on **Schedule 8.1.19**;

(xiii) all accessions to, substitutions for and all replacements, products and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies insuring any of the Collateral and claims against any Person for loss of, damage to or destruction of any of the Collateral; and

(xiv) all books and records (including customer lists, files, correspondence, tapes, computer programs (to the extent permitted), print-outs, and other computer materials and records) of such Borrower pertaining to any of the foregoing;

provided, however, that “Collateral” shall not include any Excluded Property; and provided further, that if any property shall cease to be Excluded Property, such property shall be deemed at all times from and after the date hereof to constitute Collateral.

6.2 Lien on Deposit Accounts.

6.2.1 Deposit Accounts. As additional security for the payment and performance of the Obligations, each Borrower hereby grants to Agent, for the benefit of itself as Agent and for the benefit of the Secured Parties, a continuing security interest in and Lien upon, and hereby collaterally assigns to Agent, all of such Borrower’s right, title and interest in and to each Deposit Account of such Borrower (including each Dominion Account) and in and to any deposits or other sums at any time credited to each such Deposit Account (other than the Deposit Accounts which are excluded from the requirements set forth in **Section 7.6** (such accounts, the “Excluded Accounts”)), including any sums in any blocked account or any special lockbox account and in the accounts in which sums are deposited.

6.2.2 Cash Collateral. Each Borrower hereby grants to Agent, as security for the Obligations, a security interest in all Cash Collateral held from time to time and all proceeds thereof, whether held in a Cash Collateral Account or otherwise. Agent may apply Cash Collateral to the payment of Obligations as they become due, in such order as Agent may elect. Each Cash Collateral Account and all Cash Collateral shall, (i) prior to the Payment in Full of the

First Priority Debt, be under the dominion and control of the Agent and First Priority Agent in accordance with the Subordination Agreement, and (ii) from and after the Payment in Full of the First Priority Debt, be under the sole dominion and control of Agent, and no Borrower or other Person shall have any right to any Cash Collateral, until the Full Payment of all Obligations.

6.3 Real Estate Collateral.

The Obligations shall be secured by Mortgages upon the Real Estate located at 267 Columbia Avenue, Chapin, South Carolina and 786 Wilson Road, Newberry, South Carolina. The Mortgages shall be duly recorded, at Borrowers' expense, in each office where such recording is required to constitute a fully perfected Lien on the Real Estate covered thereby. If any Borrower acquires Real Estate having a fair market value in excess of \$500,000 hereafter, Borrowers shall, within ninety (90) days (or such longer period as the Agent shall approve in its sole discretion), execute, deliver and record a Mortgage sufficient to create (i) prior to the Payment in Full of the First Priority Debt, a second priority (subject to Permitted Liens) Lien in favor of Agent on such Real Estate, and (ii) after the Payment in Full of the First Priority Debt, a first priority (subject to Permitted Liens) Lien in favor of Agent on such Real Estate, and in each case shall deliver all Related Real Estate Documents to Agent; provided, that with respect to any Real Estate having a fair market value less than \$1,000,000 but greater than \$500,000, such actions shall only be required at the request of Agent.

6.4 Other Collateral.

6.4.1 In addition to the items of Property referred to in this **Section 6**, the Obligations shall also be secured by all of the other items of Property from time to time described in any of the Security Documents as security for any of the Obligations.

6.4.2 Borrowers shall promptly notify Agent in writing if, after the Closing Date, any Borrower obtains any interest in any Collateral consisting of material Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon Agent's request, shall promptly take such actions as Agent deems appropriate to effect Agent's duly perfected Lien upon such Collateral, including obtaining any appropriate possession, control agreement or Landlord Agreement; provided that if such interest is acquired (i) prior to the Payment in Full of the First Priority Debt, such Lien shall be a second priority Lien and, (ii) after the Payment in Full of the First Priority Debt, such Lien shall be a first priority Lien. If any Collateral is in the possession of a third party, at Agent's request, Borrowers shall use commercially reasonable efforts to obtain an acknowledgment that such third party holds the Collateral for the benefit of Agent; provided, further, that until Payment in Full of the First Priority Debt, the Agent shall not require, and Borrowers shall not deliver to Agent, possessory collateral.

6.5 No Assumption of Liability.

The security interest granted pursuant to this Agreement is granted as security only and shall not subject Agent or any Lender to, or in any way alter or modify, any obligation or liability of a Borrower with respect to or arising out of the Collateral.

6.6 Lien Perfection; Further Assurances.

Promptly, but in any event within ten (10) Business Days after receipt of Agent's written request therefor, Borrowers shall execute or cause to be executed and deliver to Agent such instruments, assignments, title certificates or other documents as are necessary under the UCC or other Applicable Law (including any motor vehicle certificates of title act) to perfect (or continue the perfection of) Agent's Lien upon the Collateral, and shall take such other action as may be requested by Agent to give effect to or carry out the intent and purposes of this Agreement. Borrower shall give Agent prompt written notice at any time it commences a material Commercial Tort Claim against any Person and shall promptly amend **Schedule 8.1.19** to include such claim, and shall execute such documents as are necessary under the UCC to grant to Agent and perfect Agent's Lien in such Commercial Tort Claim. Unless prohibited by Applicable Law, each Borrower hereby irrevocably authorizes Agent to execute and file in any jurisdiction any financing statement or amendment thereto on such Borrower's behalf, including financing statements that indicate the Collateral (i) as all assets or all personal property of Borrower or words to similar effect or (ii) as being of an equal or lesser scope, or with greater or lesser detail, than as set forth in this **Section 6**. Each Borrower also hereby ratifies its authorization for Agent to have filed in any jurisdiction any like financing statements or amendments thereto if filed prior to the date hereof. The parties agree that a carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement and may be filed in any appropriate office in lieu thereof.

6.7 Foreign Subsidiary Stock.

Notwithstanding anything to the contrary set forth in **Section 6.1** above, the types or items of Collateral described in such Section shall include (i) only 65% of the voting stock of any Foreign Subsidiary to the extent that a pledge of more than 65% of the voting Equity Interests of such Foreign Subsidiary could result in material incremental income tax liability as a result of the application of Section 956 of the Code, taking into account actual or anticipated repatriation of funds, foreign tax credits and other relevant factors, and (ii) 100% of the non-voting stock of any Foreign Subsidiary.

SECTION 7. COLLATERAL ADMINISTRATION

7.1 Reserved.

7.1.1 Reserved.

7.1.2 Insurance of Collateral; Condemnation Proceeds.

(i) Borrowers shall maintain and pay for insurance upon all Collateral, wherever located, covering (i) casualty and hazard risks with respect to its Inventory and Equipment in such amounts and with such insurance companies as are reasonably satisfactory to Agent, and (ii) casualty and hazard insurance with respect to all of its Properties other than the Inventory and Equipment and theft, malicious mischief, and such other risks in such amounts and with such insurance companies as are consistent and in accordance with industry practice for

companies in the same or similar industry and of the size and owning Properties comparable to Borrowers; provided, however, that notwithstanding any industry standard, any amount of self-insurance must be reasonably satisfactory to Agent. **Schedule 7.1.2** describes all insurance of such Borrower in effect on the date hereof. All proceeds payable under each such policy shall be paid in accordance with **Section 4.3.8**. Each Borrower shall deliver the originals or certified copies of such policies to Agent with satisfactory lender's loss payable endorsements reasonably satisfactory to Agent naming Agent as sole loss payee, assignee or additional insured, as appropriate. Each policy of insurance or endorsement shall contain a clause requiring the insurer to give not less than thirty (30) days prior written notice to Agent in the event of cancellation of the policy for any reason whatsoever and a clause specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of a Borrower or the owner of the Property or by the occupation of the premises for purposes more hazardous than are permitted by said policy. If a Borrower fails to provide and pay for such insurance, Agent may, at its option, but shall not be required to, procure the same and charge Borrowers therefor. Each Borrower agrees to deliver to Agent, promptly as rendered, true copies of all reports made in any reporting forms to insurance companies. For so long as no Event of Default exists, each Borrower shall have the right to settle, adjust and compromise any claim with respect to any insurance maintained by such Borrower; provided, however, that all proceeds thereof are applied in the manner specified in this Agreement, and Agent agrees promptly to provide any necessary endorsement to any checks or drafts issued in payment of any such claim. Subject to the Subordination Agreement, at any time that an Event of Default exists, only Agent shall be authorized to settle, adjust and compromise such claims, and Agent shall have all rights and remedies with respect to such policies of insurance as are provided for in this Agreement and the other Loan Documents.

(ii) Any proceeds of insurance referred to in this **Section 7.1.2** and any condemnation awards that are paid to Lenders in connection with a condemnation of any of the Collateral shall be applied first to the payment of the Term Loans and then to any other Obligations outstanding.

7.1.3 Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes imposed under any Applicable Law on any of the Collateral or in respect of the sale thereof, and all other payments required to be made by Agent to any Person to realize upon any Collateral shall be borne and paid by Borrowers. Agent shall not be liable or responsible in any way for the safekeeping of any of the Collateral or for any loss or damage thereto (except for reasonable care in the custody thereof while any Collateral is in Agent's actual possession) or for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whomsoever, but the same shall be at Borrowers' sole risk. If any Tax, assessments or other charges by any Governmental Authority is or may be imposed, or if any claim shall be made which, in Agent's or any Lender's reasonable judgment, may possibly create a valid Lien on the Collateral, Agent or any Lender may without notice to Borrowers pay such

Taxes, assessments or other charges, and each Borrower hereby indemnifies and holds Agent and each Lender harmless in respect thereof. Agent or Lender will not pay any Taxes, assessments or charges to the extent that any applicable Borrower has Properly Contested such Taxes, assessments or charges. The amount of any payment by Agent or Lender under this **Section 7.1.3** shall be paid in cash on demand.

7.1.4 **Defense of Title to Collateral.** Each Borrower shall at all times defend such Borrower's title to the Collateral and Agent's Liens therein against all Persons and all claims and demands whatsoever other than Permitted Liens.

7.2 **Reserved.**

7.3 **Reserved.**

7.4 **Account Verification.** After Payment in Full of the First Priority Debt, and whether or not a Default or an Event of Default exists, Agent shall have the right at any time, in the name of Agent, any designee of Agent, or a Borrower to verify the validity, amount or any other matter relating to any Accounts of such Borrower by mail, telephone, telegraph or otherwise. Each Borrower shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.

7.5 **Reserved.**

7.6 **Administration of Deposit Accounts.**

Schedule 7.6 sets forth all Deposit Accounts maintained by Borrowers, including all Dominion Accounts. Each Borrower shall take all actions necessary to establish Agent's control of each such Deposit Account (other than an account exclusively used for payroll, payroll taxes or employee benefits, or an account containing not more than \$200,000 at any time; provided, however, that amounts on deposit in all such accounts do not exceed \$500,000 in the aggregate at any time and provided further that Office Accounts may contain amounts on deposit up to \$1,000,000 in the aggregate for a period of up to three (3) consecutive Business Days, so long as all amounts contained in Office Accounts that exceed \$200,000 in the aggregate are used to repay Revolver Loans (as defined in the First Priority Loan Agreement) at the end of such period). Each Borrower shall be the sole account holder of each Deposit Account and shall not allow any other Person (other than Agent and, prior to Full Payment of the First Priority Debt, First Priority Agent) to have control over a Deposit Account or any Property deposited therein. Each Borrower shall promptly notify Agent of any opening or closing of a Deposit Account and, with the consent of Agent, will amend **Schedule 7.6** to reflect same.

SECTION 8. REPRESENTATIONS AND WARRANTIES

8.1 General Representations and Warranties.

To induce Agent and Lenders to enter into this Agreement and to make the Term Loans, each Borrower warrants and represents to Agent and Lenders that:

8.1.1 Organization and Qualification. Each Borrower and its Subsidiaries is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Each Borrower and its Subsidiaries is duly qualified and is authorized to do business and is in good standing as a foreign corporation in each state or jurisdiction listed on **Schedule 8.1.1** hereto and in all other states and jurisdictions where the character of its Properties or the nature of its activities make such qualification necessary, except where failure to be so qualified would not have a Material Adverse Effect.

8.1.2 Power and Authority. Each Borrower and its Subsidiaries is duly authorized and empowered to enter into, execute, deliver and perform this Agreement and each of the other Loan Documents to which it is a party. The execution, delivery and performance of this Agreement and each of the other Loan Documents have been duly authorized by all necessary action and do not and will not (i) require any consent or approval of any of the holders of the Equity Interests of such Borrower or any Subsidiary; (ii) contravene such Borrower's or any Subsidiary's Organization Documents; (iii) violate, or cause such Borrower or any Subsidiary to be in default under, any provision of any Applicable Law, order, writ, judgment, injunction, decree, determination or award in effect having applicability to such Borrower or any Subsidiary; (iv) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other Material Contract to which such Borrower or any Subsidiary is a party or by which it or its Properties may be bound or affected; or (v) result in, or require, the creation or imposition of any Lien (other than Permitted Liens) upon or with respect to any of the Properties now owned or hereafter acquired by such Borrower or any Subsidiary.

8.1.3 Legally Enforceable Agreement. This Agreement is, and each of the other Loan Documents when delivered under this Agreement will be, a legal, valid and binding obligation of each Borrower and its Subsidiaries signatories thereto enforceable against each of them in accordance with the respective terms of such Loan Documents, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or general equitable principals, whether applied in law or equity.

8.1.4 Capital Structure. As of the date hereof, **Schedule 8.1.4** hereto states (i) the correct name of each Subsidiary, its jurisdiction of incorporation and the percentage of its Equity Interests having voting powers owned by each Person, (ii) the name of each Borrower's corporate Affiliates and the nature of the affiliation and (iii) the number of authorized and issued Equity Interests (and treasury shares) of such Borrower and each Subsidiary. Each Borrower has good title to all of the shares it purports to own of the Equity Interests of each of its Subsidiaries, free and clear in each case of any Lien other than Permitted Liens. All such Equity Interests have been duly issued and are fully paid and non-assessable. Except as set forth on **Schedule 8.1.4**, no Borrower has made, or obligated itself to make, any Distribution. Except as set forth on **Schedule 8.1.4**, no Borrower has issued any options to purchase, or any rights or warrants to subscribe for, or any commitments or agreements to issue or sell, or any Equity Interests or obligations convertible into, or any powers of attorney relating to, shares of the capital stock of such Borrower or any of its Subsidiaries. Except as set forth on **Schedule 8.1.4** hereto, there are no outstanding agreements or instruments binding upon the holders of a Borrower's Equity

Interests relating to the ownership of its Equity Interests. No Lender is an Affiliate of a Borrower.

8.1.5 Corporate Names. During the 5-year period preceding the date of this Agreement and as of the Closing Date, no Borrower nor any Subsidiary has been known as or used any corporate, fictitious or trade names except those listed on **Schedule 8.1.5** hereto. Except as set forth on **Schedule 8.1.5**, neither Borrowers nor any Subsidiary since 2007 has been the surviving corporation of a merger or consolidation or acquired all or substantially all of the assets of any Person.

8.1.6 Business Locations; Agent for Process. As of the date hereof, the chief executive office and other places of business of each Borrower and each Subsidiary are as listed on **Schedule 7.1.1** hereto. During the 5-year period preceding the date of this Agreement, neither of Borrowers nor any Subsidiary has had an office, place of business or agent for service of process other than as listed on **Schedule 7.1.1**. Except as shown on **Schedule 7.1.1** on the date hereof, no Inventory of a Borrower or any Subsidiary is stored with a bailee, warehouseman or similar Person, nor is any Inventory consigned to any Person.

8.1.7 Title to Properties; Priority of Liens. Each Borrower and each of its Subsidiaries has good and marketable title to and fee simple ownership of, or valid and subsisting leasehold interests in, all of its Real Estate, and good title to all of its personal Property, including all Property reflected in the financial statements referred to in **Section 8.1.9** or delivered pursuant to **Section 9.1.3**, in each case free and clear of all Liens except Permitted Liens. Each Borrower has paid or discharged, and has caused each Subsidiary to pay and discharge, all lawful claims which, if unpaid, could reasonably be expected to become a Lien against any Properties of such Borrower or such Subsidiary that is not a Permitted Lien, except to the extent such claim is being Properly Contested. The Liens granted to Agent pursuant to this Agreement and the other Security Documents are second priority Liens, subject only to those Permitted Liens which are expressly permitted by the terms of this Agreement to have priority over the Liens of Agent.

8.1.8 Reserved.

8.1.9 Financial Statements.

(i) The audited Consolidated balance sheets of Borrowers and such other Persons described therein (including the accounts of all Subsidiaries of Borrowers for the respective periods during which a Subsidiary relationship existed) as of December 31, 2011 and the unaudited interim balance sheets of Borrowers and such other Persons described therein (including the accounts of all Subsidiaries of Borrowers for the respective periods during which a Subsidiary relationship existed) as of August 31, 2012, and the related statements of income, changes in stockholder's equity, and changes in financial position for the periods ended on such date, have been prepared in accordance with GAAP, and present fairly the financial positions of Borrowers and such Persons at such dates and the results of Borrowers' operations for such period.

(ii) Since December 31, 2011, there has been no material adverse change in the condition, financial or otherwise, of EB and its Consolidated Subsidiaries and no material change in the aggregate value of Equipment and Real Estate owned by EB and its Consolidated Subsidiaries.

8.1.10 Full Disclosure. Neither this Agreement nor any other written statement furnished by a Borrower to Agent or any Lender for purposes of or in connection with this Agreement or the other Loan Documents contains or omits any material fact necessary to make the statements contained herein or therein not materially misleading as of the date as of which such information is dated in light of the circumstances under which such information was provided. There is no fact or circumstance in existence on the date hereof which Borrowers have failed to disclose to Agent in writing that could reasonably be expected to have a Material Adverse Effect.

8.1.11 Solvent Financial Condition. Each Borrower and each of its Subsidiaries is now Solvent and, after giving effect to the Term Loans to be made hereunder, the First Priority Debt to be borrowed on the date hereof and the consummation of the Transactions, each Borrower and each of its Subsidiaries will be Solvent.

8.1.12 Surety Obligations. Except as set forth on **Schedule 8.1.12**, no Borrower nor any of their Subsidiaries are obligated as surety or indemnitor under any surety or similar bond or other contract issued or entered into any agreement to assure payment, performance or completion of performance of any undertaking or obligation of any Person.

8.1.13 Taxes. The FEIN of each Borrower and each of its Subsidiaries is as shown on **Schedule 8.1.13** hereto. Each Borrower and each of its Subsidiaries has filed all federal, state and other material tax returns and other reports it is required by law to file and, to the knowledge of Borrowers, has paid, or made provision for the payment of, all Taxes upon it, its income and Properties as and when such Taxes are due and payable, except to the extent being Properly Contested. To the knowledge of each Borrower, the provision for Taxes on the books of such Borrower and each of its Subsidiaries are adequate for all years not closed by applicable statutes, and for its current Fiscal Year.

8.1.14 Brokers. There are no claims against a Borrower or amounts owing or to be owed by a Borrower for brokerage commissions, finder's fees or investment banking fees in connection with the transactions contemplated by this Agreement or any of the other Loan Documents.

8.1.15 Intellectual Property. Each Borrower and each of its Subsidiaries each owns or has the lawful right to use all Intellectual Property necessary for the present and planned future conduct of its business without, to its knowledge, any conflict with the rights of others; except as set forth on **Schedule 8.1.15**, there is no objection to, or pending or threatened Intellectual Property Claim with respect to, such Borrower's or any of its Subsidiary's right to use any such Intellectual Property and such Borrower is not aware of any grounds for challenge or objection thereto; and, except as may be disclosed on **Schedule 8.1.15**, neither Borrower nor any of its Subsidiaries pays any royalty or other compensation to any Person for the right to use any Intellectual Property (other than with respect to off-the-shelf or prepackaged software). All

such patents, trademarks, service marks, tradenames, copyrights, licenses and other similar rights are listed on **Schedule 8.1.15** hereto, to the extent they are registered under any Applicable Law or are otherwise material to a Borrower's or any of its Subsidiaries' business.

8.1.16 Governmental Approvals. Each Borrower and each of its Subsidiaries has, and is in good standing with respect to, all Governmental Approvals necessary to continue to conduct its business as heretofore or proposed to be conducted by it and to own or lease and operate its Properties as now owned or leased by it.

8.1.17 Compliance with Laws. Each Borrower and each of its Subsidiaries is and its Properties, business operations and leaseholds are in compliance in all material respects with, the provisions of all Applicable Laws (including Anti-Terrorism Laws) and there have been no citations, notices or orders of noncompliance issued to such Borrower or any of the Subsidiaries under any such law, rule or regulation. Each Borrower is in compliance in all material respects with all Environmental Laws applicable to it and Properties owned by it. No Borrower or Subsidiary has received any material Environmental Notice. No Borrower or Subsidiary has any liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now (or to the knowledge of the Borrower any previously) owned, leased or operated by it that could reasonably be expected to have a Material Adverse Effect. Each Borrower has established and maintains an adequate monitoring system to insure that it remains in compliance with all Applicable Laws.

8.1.18 Burdensome Contracts. Neither Borrower nor any of its Subsidiaries is a party or subject to any contract, agreement, or charter or other corporate restriction, which has or could be reasonably expected to have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries is a party or subject to any Restrictive Agreements, except as set forth on **Schedule 8.1.18**. No such Restrictive Agreement prohibits the execution, delivery or performance of any Loan Document by an Obligor.

8.1.19 Litigation. Except as set forth on **Schedule 8.1.19** hereto, there are no actions, suits, proceedings or investigations pending or, to the knowledge of a Borrower, threatened on the date hereof against or affecting such Borrower or any of the Subsidiaries, or the business, operations, Properties, prospects, profits or condition of such Borrower or any of the Subsidiaries. Except as shown on such Schedule, neither Borrower nor any of its Subsidiaries has any interest in a Commercial Tort Claim (other than, as long as no Default or Event of Default exists, a Commercial Tort Claim for less than \$115,000). Neither such Borrower nor any of its Subsidiaries is in default on the date hereof with respect to any order, writ, injunction, judgment, decree or rule of any court, Governmental Authority or arbitration board or tribunal.

8.1.20 No Defaults. No event has occurred and no condition exists which would, upon or after the execution and delivery of this Agreement or such Borrower's performance hereunder, constitute a Default or an Event of Default. Neither Borrower nor any of its Subsidiaries is in default, and no event has occurred and no condition exists which constitutes or which with the passage of time or the giving of notice or both would constitute a default, under any Material Contract or in the payment of any Debt of such Borrower or a Subsidiary to any Person for Money Borrowed.

8.1.21 Leases. **Schedule 8.1.21** hereto is a complete listing of each capitalized and operating lease of each Borrower and its Subsidiaries on the date hereof. Each Borrower and each of its Subsidiaries is in substantial compliance with all of the terms of each of its respective capitalized and operating leases and there is no current basis upon which the lessors under any such leases could terminate same prior to the scheduled maturity or stated termination date thereof or declare such Borrower or any of its Subsidiaries in default thereunder.

8.1.22 Pension Plans. Except as disclosed on **Schedule 8.1.22** hereto, neither any Obligor nor any of its Subsidiaries maintains, sponsors, contributes to, is required to maintain or contribute to or has any liability, whether contingent or otherwise, with respect to any Plan. Each Obligor and each of its Subsidiaries are in compliance with the requirements of ERISA and the regulations promulgated thereunder with respect to each Plan in all material respects. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of the Obligors, nothing has occurred which would prevent, or cause the loss of, such qualification. No fact or situation that is reasonably likely to result in a material adverse change in the financial condition of an Obligor or any of the Subsidiaries exists in connection with any Plan. No Obligor nor any of its respective Subsidiaries has any withdrawal liability in connection with a Multiemployer Plan. No employee benefit plan (as defined in Section 3(3) of ERISA) maintained by an Obligor or a Subsidiary provides health or medical coverage, life insurance coverage, disability benefit coverage or coverage for any other welfare benefit to any former employee, officer, director or independent contractor of any Obligor or ERISA Affiliate, except for continuation coverage required by Section 4980B of the Code, Sections 601 to 608 of ERISA or any similar Applicable Law. Except as could not reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) each Obligor and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 80% or higher and neither any Obligor nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 80% as of the most recent valuation date; (iv) neither any Obligor nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) no Obligor or ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (vi) no Obligor or ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (vii) no Obligor or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

8.1.23 Trade Relations. There exists no actual or threatened termination, cancellation or limitation of, or any materially adverse modification or change in, the business

relationship between a Borrower and any customer or any group of customers whose purchases individually or in the aggregate are material to the business of such Borrower, or with any material supplier or group of suppliers, and there exists no condition or state of facts or circumstances which is reasonably likely to have a Material Adverse Effect or prevent such Borrower from conducting such business after the consummation of the transactions contemplated by this Agreement in the same manner as it has heretofore been conducted.

8.1.24 Labor Relations. Except as described on **Schedule 8.1.24** hereto, neither Borrower nor any of its Subsidiaries is a party to any collective bargaining agreement on the date hereof. On the date hereof, there are no material grievances, disputes or controversies with any union or any other organization of such Borrower's or any of its Subsidiary's employees, or any threats of strikes, work stoppages or any asserted pending demands for collective bargaining by any union or organization.

8.1.25 Not a Regulated Entity. No Obligor is (i) an "investment company" or a "person directly or indirectly controlled by or acting on behalf of an investment company" within the meaning of the Investment Company Act of 1940 or (ii) subject to regulation under any other Applicable Law regarding its authority to incur Debt.

8.1.26 Margin Stock. No Borrower nor any of its Subsidiaries is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

8.1.27 Projections. All financial and business projections heretofore delivered to Agent and Lenders by Borrowers have been prepared by Borrowers in good faith and are based on reasonable assumptions.

8.1.28 Disregarded Subsidiaries. As of the Closing Date, each Subsidiary listed on **Schedule 8.1.28** is a Disregarded Subsidiary.

8.2 Survival of Representations and Warranties.

All representations and warranties of each Borrower contained in this Agreement or any of the other Loan Documents shall survive the execution, delivery and acceptance thereof by Agent, Lenders and the parties thereto and the closing of the transactions described therein or related thereto.

SECTION 9. COVENANTS AND CONTINUING AGREEMENTS

9.1 Affirmative Covenants.

Until Full Payment of the Obligations, each Borrower covenants that, unless the Required Lenders have otherwise consented in writing, it shall and shall cause each Subsidiary to:

9.1.1 Visits and Inspections. Permit representatives of Agent and Prospect and Summit, as long as either shall be an Original Lender, from time to time, as often as may be reasonably requested, but only during normal business hours and (except when a Default or an Event of Default exists) upon reasonable prior notice to such Borrower, to visit and inspect the

Properties of such Borrower and each Subsidiary, conduct appraisals of a Borrower's Properties, inspect, audit and make extracts from each Borrower's and each of its respective Subsidiary's books and records, and discuss with its officers, its employees and its independent accountants, Borrower's and each Subsidiary's business, financial condition, business prospects and results of operations. Representatives of Borrowers (including Borrowers' accountants) shall be authorized to accompany Agent on any such visit or inspection, but such authorization shall in no manner be deemed to be a requirement or condition of Agent's visits or inspections, and to the extent any of Borrowers' representatives accompany Agent on any visit or audit, such Persons shall in no manner hinder or delay the audits or inspections of Agent. Representatives of each Lender shall be authorized to accompany Agent on each such visit and inspection and to participate with Agent therein, but at their own expense, unless a Default or Event of Default exists. Neither Agent nor any Lender shall have any duty to make any such inspection and shall not incur any liability by reason of its failure to conduct or delay in conducting any such inspection.

9.1.2 Notices. Notify Agent and Lenders in writing, promptly after Borrower's obtaining knowledge thereof: (i) of the commencement of any litigation or Intellectual Property Claim affecting any Obligor or any of its Properties, whether or not the claims asserted in such litigation or Intellectual Property Claim are considered by such Borrower to be covered by insurance, and of the institution of any administrative proceeding; (ii) of any labor dispute to which any Obligor may become a party, any strikes or walkouts relating to any of its plants or other facilities, and the expiration of any labor contract to which it is a party or by which it is bound; (iii) of any default by any Obligor under, or termination of, any Material Contract or any note, indenture, loan agreement, mortgage, lease, deed, guaranty or other similar agreement relating to any Debt of such Obligor exceeding \$1,150,000; (iv) of the existence of any Default or Event of Default; (v) of any judgment against any Obligor in an amount exceeding \$862,500; (vi) of any violation or asserted violation by such Borrower of any Applicable Law (including ERISA, OSHA, FLSA, Anti-Terrorism Laws or any Environmental Laws), the adverse resolution of which could reasonably be expected to have a Material Adverse Effect or result in liability of such Borrower in an amount in excess of \$1,150,000 or result in the loss of any federal firearms license; (vii) of any Environmental Release or receipt of any Environmental Notice by an Obligor or on any Property owned or occupied by an Obligor if such Environmental Release or matters disclosed in such Environmental Notice could reasonably be expected to have a Material Adverse Effect or result in liability of such Borrower in an amount in excess of \$1,000,000; (viii) of the discharge of Borrower's independent accountants or any withdrawal or resignation by such independent accountants from their acting in such capacity; and (ix) the occurrence of any ERISA Event which could reasonably be expected to have a Material Adverse Effect or result in liability of such Borrower in an amount in excess of \$1,150,000. In addition, each Borrower shall give Agent at least ten (10) Business Days' prior written notice of any Obligor's opening of any new office or place of business.

9.1.3 Financial and Other Information. Keep adequate records and books of account with respect to its business activities in which proper entries are made in accordance with GAAP reflecting all its financial transactions; and cause to be prepared and to be furnished to Agent and Lenders the following (all to be prepared in accordance with GAAP applied on a consistent basis, unless Borrower's certified public accountants concur in any change therein,

such change is disclosed to Agent and is consistent with GAAP and, if required by Lenders, the financial covenants set forth in **Section 9.3** are amended in a manner requested by Lenders to take into account the effects of such change):

(i) as soon as available, and in any event within ninety (90) days after the close of each Fiscal Year, the unqualified audited balance sheet of Borrowers and their Subsidiaries as of the end of such Fiscal Year and the related statements of income, shareholders' equity and cash flow, on a Consolidated (and certified without material qualification) basis, by a firm of independent certified public accountants of recognized national standing selected by Borrowers but reasonably acceptable to Agent (except for a qualification for a change in accounting principles with which the accountant concurs), and setting forth in each case in comparative form the corresponding Consolidated figures for the preceding Fiscal Year and the corresponding budgeted figures for such Fiscal Year as set forth in the budget most recently delivered pursuant to **Section 9.1.5**;

(ii) as soon as available, and in any event within thirty (30) days after the end of each Fiscal Quarter, unaudited balance sheet of Borrowers and their Subsidiaries as of the end of such Fiscal Quarter and the related unaudited statements of income and cash flow for such Fiscal Quarter and for the portion of Borrowers' Fiscal Year then elapsed, on a Consolidated basis, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year and the corresponding budgeted figures for such Fiscal Year as set forth in the budget most recently delivered pursuant to **Section 9.1.5** and certified by the principal financial officer of Borrowers as prepared in accordance with GAAP and fairly presenting the Consolidated financial position and results of operations of Borrowers and their Subsidiaries for such Fiscal Quarter and period subject only to changes from audit and year-end adjustments and except that such statements need not contain notes; and

(iii) as soon as available, and in any event within thirty (30) days after the end of each month, the unaudited balance sheet of Borrowers and their Subsidiaries as of the end of such month and the related unaudited statements of income and cash flow for such month and for the portion of Borrowers' Fiscal Year then elapsed, on a Consolidated basis, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year and the corresponding budgeted figures for such Fiscal Year as set forth in the budget most recently delivered pursuant to **Section 9.1.5** and certified by the principal financial officer of Borrowers as prepared in accordance with GAAP and fairly presenting the Consolidated financial position and results of operations of Borrowers and their Subsidiaries for such month and period subject only to changes from audit and year-end adjustments and except that such statements need not contain notes.

Concurrently with the delivery of the financial statements described in clauses (i) and (ii) of this **Section 9.1.3**, or more frequently if requested by Agent or any Lender during any period that a Default or Event of Default exists, each Borrower shall cause to be prepared and furnished

to Agent and Lenders a Compliance Certificate executed by the chief financial officer of such Borrower, which Compliance Certificate shall include a schedule of the calculations used in determining, as of the immediately preceding Fiscal Quarter end, the calculation of Consolidated Fixed Charge Coverage Ratio and Consolidated Total Leverage Ratio for such Fiscal Quarter.

Promptly after the sending, receipt or filing thereof, each Borrower shall also provide to Agent copies of any annual report to be filed in accordance with ERISA in connection with each Plan and copies of any correspondence between such Borrower and any Governmental Authority regarding any Pension Plan or Multiemployer Plan, and such other data and information (financial and otherwise) as Agent, from time to time, may reasonably request, bearing upon or related to the Collateral or such Borrower's and each of its Subsidiaries' financial condition or results of operations including, without limitation, the most recent Borrowing Base Certificate delivered to First Priority Agent, to be provided to Lenders within ten (10) Business Days of Agent's or an Original Lender's request therefore.

9.1.4 Landlord and Storage Agreements. Provide Agent with copies of all existing agreements, and promptly after execution thereof provide Agent with copies of all agreements entered into after the Closing Date, between such Borrower and any landlord, warehouseman or bailee which owns any premises at which any Collateral may, from time to time, be kept.

9.1.5 Projections. No later than January 31 of each Fiscal Year of Borrowers, deliver to each Lender the Projections of Borrowers for the forthcoming Fiscal Year, on a month by month basis.

9.1.6 Taxes. Pay and discharge all Taxes prior to the date on which such Taxes become delinquent or penalties attach thereto, except and to the extent only that such Taxes are being Properly Contested.

9.1.7 Compliance with Laws. Comply in all material respects with all Applicable Law, including ERISA, all Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws and all laws, statutes, regulations and ordinances regarding the collection, payment and deposit of Taxes, and obtain and keep in force any and all Governmental Approvals necessary to the ownership of its Properties or to the conduct of its business. Without limiting the generality of the foregoing, Borrowers and their Subsidiaries shall comply in all material respects with all Environmental Laws applicable to the ownership, lease or use of its Property now or hereafter owned, leased or operated by a Borrower or any of its Subsidiaries, will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and will keep or cause to be kept all such Property free and clear of any Liens imposed pursuant to such Environmental Laws. Neither Borrower nor any of its Subsidiaries will generate, use, treat, store, release or dispose of, or permit the generation, use, treatment, storage, release or disposal of Hazardous Materials on any Real Estate now or hereafter owned, leased or operated by such Borrower or any of its Subsidiaries, or transport or permit the transportation of Hazardous Materials to or from any such Real Estate, except in each case for Hazardous Materials generated, used, treated, stored, released or disposed of at any such Real Estate in compliance with all applicable Environmental Laws and reasonably required in connection with the

operation, use and maintenance of the business or operations of such Borrower or its Subsidiaries.

9.1.8 Insurance. In addition to the insurance required herein with respect to the Collateral, maintain with financially sound and reputable insurers, insurance with respect to its Properties and business against such casualties and contingencies of such type (including product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance) and in such amounts as is customary in the business of such Borrower or such Subsidiary.

9.1.9 Intellectual Property. (i) Promptly after applying for or otherwise acquiring any material Intellectual Property (other than off-the-shelf or prepackaged software), deliver to Lender, in form and substance acceptable to Lender and in recordable form, all documents necessary for Lender to perfect its Lien on such material Intellectual Property; (ii) keep each License (other than any such License that failure to so keep could not reasonably be expected to have a Material Adverse Effect) affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of Borrowers and Subsidiaries in full force and effect; pay all Royalties when due; and notify Agent of any default or breach asserted by any Person to have occurred under any License; and (iii) preserve or renew all of its Intellectual Property, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

9.1.10 Board Information Rights. Permit each Original Lender to appoint by written notice to the Borrowers one individual from time to time (the "Observer") to represent such Lender and attend all meetings of the Governing Body of EB and SportCo, through which EB or SportCo shall transact, or cause to be transacted, all of the business of EB or SportCo. The Observer shall not have the right to vote on any matter presented to the Governing Body of any Obligor or any committee thereof. Each Obligor shall give the Observer written notice of each meeting thereof at the same time and in the same manner as it notifies the members of its Governing Body of such meetings as set forth in the Organization Documents of such Obligor, and each such Obligor shall permit the Observer to attend as an observer all meetings thereof. Each Obligor shall deliver, or cause to be delivered, to the Observer all materials and other information given to the members of its Governing Body in connection with such meetings at the same time such materials and information are given to such members. The Obligors shall pay the reasonable costs and expenses of the Observer incurred in connection with attending such meetings. Any action to be taken by the Obligors in connection with this Agreement or any other Loan Document shall be taken by the Governing Body in accordance with the terms of its Organization Documents and this Agreement. If a matter is to be discussed or otherwise arises at any meeting of a Governing Body which, in the reasonable good faith judgment of such Governing Body, is not appropriate to be discussed in the presence of any Observer in order to preserve an attorney-client privilege, then such matter may be discussed without any Observer being present, so long as each Observer is given notice of the occurrence of such judgment by such Governing Body and that each Observer is being excused.

9.1.11 Treasury Management. Maintain all treasury management services with Bank of America or other financial institutions reasonably acceptable to Agent, including but not limited to services for the maintenance of all operating and Deposit Accounts (other than

the Excluded Accounts), lockbox administration, funds transfer and information reporting services, each in form and substance reasonably satisfactory to Agent.

9.1.12 Future Loan Parties.

(i) Promptly notify Agent and each Lender if any Disregarded Subsidiary acquires assets in excess of \$100,000, and cause such Disregarded Subsidiary to either become a party to this agreement as a Borrower or to guaranty the Obligations in a manner reasonably satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall reasonably require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties) on all assets (other than Real Estate for which a Mortgage is not required pursuant to **Section 6.3**) of such Disregarded Subsidiary that would be required to be pledged as Collateral, including delivery of such legal opinions, in form and substance reasonably satisfactory to Agent, as it shall deem appropriate.

(ii) Promptly notify Agent upon any Person becoming a Subsidiary and, if such Person (i) is not a Foreign Subsidiary and (ii) is not a Disregarded Subsidiary, cause it to either become a party to this agreement as a Borrower or to guaranty the Obligations in a manner reasonably satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties) on all assets (other than Real Estate having a fair market value of less than \$500,000) of such Person that would be required to be pledged as Collateral, including delivery of such legal opinions, in form and substance reasonably satisfactory to Agent, as it shall deem appropriate.

9.1.13 Maintenance of Existence, etc. (i) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Applicable Laws of the jurisdiction of its organization, except in a transaction permitted by **Section 9.2.1** or **9.2.10** and (ii) take all reasonable action to maintain all rights, privileges, permits, and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

9.1.14 Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on **Schedule 9.1.14**, in each case within the time limits specified on such schedule, as may be extended by the Agent in its sole discretion.

9.2 Negative Covenants.

Until Full Payment of all Obligations, each Obligor covenants that unless the Required Lenders have otherwise consented in writing, it shall not and shall not permit any Subsidiary to:

9.2.1 Fundamental Changes. (i) Merge, reorganize, consolidate or amalgamate with any Person, or liquidate, wind up its affairs or dissolve itself, except for (a) mergers or consolidations of any Obligor into an Obligor, any Subsidiary into an Obligor

(with such Obligor being the survivor thereof) or any Disregarded Subsidiary into another Disregarded Subsidiary; provided, however, that the survivor of any merger or consolidation involving a Borrower shall be a Borrower and (b) dissolutions of any Disregarded Subsidiary so long as the assets thereof are contributed to a Borrower; (ii) change any Borrower's name or conduct business under any new fictitious name; or (iii) change any Borrower's state of incorporation or formation, FEIN or organizational identification number.

9.2.2 Loans. Make any loans or other advances of money to any Person other than (i) loans or other advances to an officer or employee of such Borrower, a Subsidiary or an Affiliate; provided, that the aggregate amount of all such loans and advances under this clause (i) shall not exceed \$230,000 at any time outstanding, (ii) loans or other advances to an officer or employee of such Borrower or a Subsidiary for salary, travel advances, advances against commissions and other similar advances in the Ordinary Course of Business and (iii) so long as no Default or Event of Default exists, loans from a Borrower to another Borrower pursuant to an intercompany note that is pledged to the Agent or, prior to Payment in Full of the First Priority Debt, the First Priority Agent.

9.2.3 Permitted Debt. Create, incur, assume, guarantee or suffer to exist any Debt, except:

(i) the Obligations;

(ii) accounts payable by such Borrower or a Subsidiary to trade creditors incurred in the Ordinary Course of Business and paid when due, unless the same are being Properly Contested;

(iii) obligations to pay Rentals permitted by **Section 9.2.14**;

(iv) Purchase Money Debt owing by a Borrower; provided, however, that the aggregate amount of all such Purchase Money Debt owing by Borrowers on any date does not exceed \$4,600,000;

(v) Debt for accrued payroll, Taxes and other operating expenses (other than for Money Borrowed) incurred in the Ordinary Course of Business of such Borrower or such Subsidiary, including Cash Management Obligations (as defined in the First Priority Loan Agreement on the date hereof), in each case so long as payment thereof is not past due and payable unless such Debt (other than Debt for accrued payroll) is being Properly Contested;

(vi) Debt for Money Borrowed by such Borrower (other than the Obligations), but only to the extent that such Debt is (a) outstanding on the date of this Agreement, (b) identified on **Schedule 9.2.3** and (c) not to be satisfied on the Closing Date from the proceeds of the Term Loans;

(vii) Permitted Contingent Obligations;

(viii) Debt owing by such Borrower to the other Borrower;

(ix) the First Priority Debt; provided, however, that (a) such Debt shall at all times be subject to the terms of the Subordination Agreement, and (b) no First Priority Debt may be held by any Obligor, Wellspring, or any of their respective Affiliates;

(x) Debt that is not included in any of the preceding paragraphs of this **Section 9.2.3**, is not secured by a Lien (unless such Lien is a Permitted Lien) and does not exceed at any time, in the aggregate, the sum of \$8,000,000 as to all Borrowers and their Subsidiaries.

Notwithstanding the foregoing, no Obligor shall, nor shall it permit any other Obligor or any Subsidiary to, at any time, (x) create or incur any Debt that, pursuant the terms of the documentation governing such Debt (including any intercreditor arrangement), is subordinated in any manner (including, in right of payment or as a result of lien subordination) to any other Debt of any Obligor unless such Debt is also contractually subordinated in right of payment to the Obligations or (y) enter into any arrangements (or agreements or waivers, amendments or modifications thereof) or take any other action (or permit such action to be taken) or cooperate with any other party in taking any action which would or would purport to subordinate in right of payment any Debt of any Obligor to any Debt of any other Obligor including, for this purpose, the granting of subordinated participations in any such Debt unless such subordinated participation is also subordinated in right of payment to the Obligations. Notwithstanding anything herein to the contrary, the First Priority Debt shall be deemed to be incurred pursuant to clause (ix) above.

9.2.4 Affiliate Transactions. Enter into, or be a party to any transaction with any Affiliate, except: (i) the transactions contemplated by the Loan Documents; (ii) payment of reasonable compensation to officers and employees for services actually rendered to such Borrower or its Subsidiaries, and loans and advances permitted by **Section 9.2.2**; (iii) payments to Wellspring of fees and expenses in accordance with the Expense Reimbursement Agreement as in effect on the Closing Date; provided, however, that (a) both before and after giving effect to such payments, no Default or Event of Default shall have occurred and be continuing, and (b) such payments shall not exceed \$862,500 per annum plus any amount of such payments that were prohibited from being paid pursuant to the preceding subsection (a); (iv) payment of customary directors' fees and indemnities; (v) transactions with Affiliates in the Ordinary Course of Business and pursuant to the reasonable requirements of a Borrower's or its Subsidiary's business and upon fair and reasonable terms that are no less favorable to such Borrower or such Subsidiary than such Borrower or such Subsidiary would obtain in a comparable arm's length transaction with a Person not an Affiliate or stockholder of such Borrower or such Subsidiary provided, that any such transaction in an amount equal to or greater than \$2,000,000 that involves an Affiliate (other than Bullseye Holding Company LLC and its Subsidiaries) shall require a fairness opinion from an independent third party valuation firm reasonably acceptable to the Agent and the Required Lenders; and (vi) the Transactions.

9.2.5 Limitation on Liens. Create or suffer to exist any Lien upon any of its Property, income or profits, whether now owned or hereafter acquired, except the following (collectively, "Permitted Liens"):

- (i) Liens at any time granted in favor of Agent;
- (ii) Liens for Taxes (excluding any Lien imposed pursuant to any of the provisions of ERISA) not yet due or being Properly Contested;
- (iii) statutory Liens (excluding any Lien imposed pursuant to any of the provisions of ERISA) arising in the Ordinary Course of Business of such Borrower or a Subsidiary, but only if and for so long as (x) payment in respect of any such Lien is not at the time required or the Debt secured by any such Liens is being Properly Contested and (y) such Liens do not materially detract from the value of the Property of such Borrower or such Subsidiary and do not materially impair the use thereof in the operation of Borrower's or such Subsidiary's business;
- (iv) Purchase Money Liens to secure any Purchase Money Debt to the extent the Debt secured by such Liens is permitted pursuant to **Section 9.2.3(iv)** hereof;
- (v) Liens securing Debt of a Subsidiary of such Borrower that is owing to such Borrower or to another Subsidiary of such Borrower;
- (vi) Liens arising by virtue of the rendition, entry or issuance against such Borrower or any Subsidiary, or any Property of such Borrower or any Subsidiary, of any judgment, writ, order, or decree so long as each such Lien (a) is in existence for less than twenty (20) consecutive days after it first arises or is being Properly Contested and (b) is at all times junior in priority to any Liens in favor of Agent;
- (vii) Liens incurred or deposits made in the Ordinary Course of Business to secure the performance of tenders, bids, leases, contracts (other than for the repayment of Money Borrowed), statutory obligations and other similar obligations or arising as a result of progress payments under government contracts; provided, however, that, to the extent any such Liens attach to any of the Collateral, such Liens are at all times subordinate and junior to the Liens upon the Collateral in favor of Agent on terms acceptable to Agent in its sole discretion;
- (viii) easements, rights-of-way, restrictions, covenants or other agreements of record and other similar charges or encumbrances on Real Estate of such Borrower or a Subsidiary that do not secure any monetary obligation and do not interfere in any material respect with the ordinary conduct of the business of such Borrower or such Subsidiary;
- (ix) normal and customary rights of setoff upon deposits of cash in favor of banks and other depository institutions and Liens of a collection bank arising under the UCC on Payment Items in the course of collection;

(x) Liens in existence immediately prior to the Closing Date that are satisfied in full and released on the Closing Date as a result of the application of Borrower's cash on hand at the Closing Date or the proceeds of Term Loans to be made on the Closing Date;

(xi) such other Liens as appear on **Schedule 9.2.5** hereto, to the extent provided therein;

(xii) such other Liens as Agent and Lenders in their sole discretion may hereafter approve in writing;

(xiii) Leases and subleases granted by a Borrower to other Persons not materially interfering with the conduct of such Borrower's business or affecting adversely any Liens granted to Agent;

(xiv) statutory and common law landlords' liens under leases to which such Borrower or any of its Subsidiaries is a party and for which Agent has received a Landlord Agreement;

(xv) subject to the terms of the Subordination Agreement, Liens on the Collateral in favor of the First Priority Agent securing the First Priority Debt until Full Payment of the First Priority Debt.

The foregoing negative pledge shall not apply to any Margin Stock to the extent that the application of such negative pledge to such Margin Stock would require filings or other actions by Agent or any Lender under such regulations or otherwise result in a violation of such regulations.

9.2.6 Restrictions on Payment of Certain Debt. Make any payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) with respect to any (i) Subordinated Debt; and (ii) Money Borrowed (other than the Obligations and the First Priority Debt) prior to its due date under the agreements evidencing such Debt as in effect on the Closing Date (or as amended thereafter with the consent of Agent).

9.2.7 Distributions. Declare or make any Distributions, or set apart assets for a sinking or other analogous fund for the purpose of making Distributions, except for (i) Upstream Payments, (ii) the payment by EB to each of its members of income taxes then being assessed against such member on items of ordinary income and expense and net capital gain allocated to such member by EB in accordance with the terms of the operating agreement of EB, and (iii) the Closing Date Distribution and the Distribution to Holdings (for further Distribution to SportCo) to repay the Wellspring Debt in full on the Closing Date, which Distributions under this subclause (iii) shall be excluded from all calculations of Consolidated Fixed Charge Coverage Ratio.

9.2.8 Upstream Payments. Create or suffer to exist any encumbrance or restriction on the ability of a Subsidiary to make any Upstream Payment, except for encumbrances or restrictions (i) pursuant to the Loan Documents and the First Priority Debt

Documents, (ii) existing under Applicable Law and (iii) identified and fully disclosed in **Schedule 9.2.8**.

9.2.9 Holding Companies.

(i) SportCo. Borrowers shall cause SportCo to refrain from any business or activity other than (a) the ownership of all outstanding Equity Interests in Holdings, (b) maintaining its corporate existence, (c) participating in tax, accounting and other administrative activities as the parent of Holdings, (d) the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, (e) providing a guaranty of the First Priority Debt, and (f) activities incidental to the businesses or activities described in clauses (a) through (e) of this Section.

(ii) Holdings. Borrowers shall cause Holdings to refrain from any business or activity other than (a) the ownership of all outstanding Equity Interests in EB, (b) maintaining its corporate existence, (c) participating in tax, accounting and other administrative activities as the parent of EB, (d) the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, (e) providing a guaranty of the First Priority Debt, and (f) activities incidental to the businesses or activities described in clauses (a) through (e) of this Section.

9.2.10 Disposition of Assets. Sell, assign, lease, consign or otherwise dispose of any of its Properties or any interest therein, to or in favor of any Person, except (i) sales or leases of Properties consisting of Real Estate owned by Borrowers or their Subsidiaries, (ii) sales of Inventory in the Ordinary Course of Business, (iii) sales or leases of Properties (other than Real Estate and Accounts) not to exceed \$1,000,000 in the aggregate in any Fiscal Year of EB, (iv) sale and leaseback transactions of Properties owned by Borrowers or their Subsidiaries (other than sale and leaseback transactions involving Affiliates of Borrowers or their Subsidiaries as purchasers or lessors) and (v) other dispositions expressly authorized by other provisions of the Loan Documents.

9.2.11 Subsidiaries. Form or acquire any Subsidiary after the Closing Date or permit any existing Subsidiary to issue any additional Equity Interests, unless otherwise in compliance with **Section 9.1.12**.

9.2.12 Bill-and-Hold Sales and Consignments. Make a sale to any customer on a bill-and-hold, guaranteed sale, sale and return, sale on approval or consignment basis, or any sale on a repurchase or return basis.

9.2.13 Restricted Investments. Make or maintain any Restricted Investment.

9.2.14 Leases. Other than pursuant to (x) a sale and leaseback transaction permitted in **Section 9.2.10**, and (y) those certain leases set forth on **Schedule 9.2.14**, become a lessee under (i) any operating lease (other than an operating lease under which a Borrower or any of the Subsidiaries is lessor) of Property if, as to Borrowers and all of their Subsidiaries, the

aggregate Rentals payable during any current or future period of 12 consecutive months under the operating lease in question and all other operating leases under which Borrowers or any of their Subsidiaries are then a lessee would exceed \$1,725,000 or (ii) any capitalized lease (other than a capitalized lease under which a Borrower or any of the Subsidiaries is lessor) of Property if, as to Borrowers and all of their Subsidiaries, the aggregate value of capitalized leases (as stated on the Consolidated balance sheet of Borrowers) under which Borrowers or any of their Subsidiaries are then a lessee would exceed \$862,500.

9.2.15 Tax Consolidation. File or consent to the filing of any consolidated income tax return with any Person other than Holdings or SportCo.

9.2.16 Accounting Changes. Make any significant change in accounting treatment or reporting practices, except as may be required by GAAP, or establish a fiscal year different from the Fiscal Year.

9.2.17 Organization Documents. Amend, modify or otherwise change any of the terms or provisions in any of its Organization Documents as in effect on the date hereof, except for changes that do not affect in any way Borrower's or such Subsidiary's rights and obligations to enter into and perform the Loan Documents to which it is a party and to pay all of the Obligations and that do not otherwise have a Material Adverse Effect.

9.2.18 Restrictive Agreements. Enter into or become a party to any Restrictive Agreement; provided, however, that (i) the foregoing shall not apply to Restrictive Agreements existing on the date hereof and identified on **Schedule 8.1.18** (but shall apply to any amendment or modification expanding the scope of any restriction or condition contained in any such Restrictive Agreement), (ii) the foregoing shall not apply to liens, restrictions or conditions imposed by any Restrictive Agreement relating to secured Debt permitted by this Agreement if such liens, restrictions or conditions apply only to the Properties securing such Debt and (iii) the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

9.2.19 Hedging Agreements. Enter into any Hedging Agreement, other than Hedging Agreements entered into to hedge or mitigate risks to which such Borrower or any of its Subsidiaries is exposed in the conduct of its business or the management of its liabilities and not for any speculative purpose.

9.2.20 Conduct of Business. Engage in any business other than the business engaged in by it on the Closing Date and any business or activities which are substantially similar, related or incidental thereto.

9.2.21 Amendments to First Priority Loan Documents. Amend, supplement or otherwise modify the First Priority Loan Documents to the extent expressly prohibited by the Subordination Agreement.

9.2.22 Pension Plans and Retirement Medical Plans. (a) Create or allow to be created (a) any new Pension Plan or (b) any employee benefit plan as defined in Section 3(3) of ERISA) which provides health or medical coverage, life insurance coverage, disability benefit

coverage or coverage for any other welfare benefit to any former employee, officer, director or independent contractor of any Obligor or ERISA Affiliate, except for continuation coverage required by Section 4980B of the Code, Section 601 to 608 of ERISA or any Applicable Law.

9.3 Financial Covenants.

9.3.1 Fixed Charge Coverage Ratio. Until Full Payment of all Obligations, Borrowers shall maintain a Consolidated Fixed Charge Coverage Ratio of not less than 1.00 to 1.00, in each case as tested at the end of each Fiscal Quarter for the immediately preceding four Fiscal Quarters.

9.3.2 Total Leverage Ratio. Until Full Payment of all Obligations, Borrowers shall maintain a Consolidated Total Leverage Ratio of not greater than 6.75 to 1.00, in each case as tested at the end of each Fiscal Quarter for the immediately preceding four Fiscal Quarters.

9.3.3 Cure Rights. Notwithstanding anything to the contrary contained herein, in the event that the Borrowers fail to comply with the financial covenants set forth in **Section 9.3.1** or **9.3.2**, as the case may be, for any Fiscal Quarter, until the date that is fifteen (15) Business Days after the date on which a Compliance Certificate for such Fiscal Quarter is required to be delivered pursuant to **Section 9.1.3(ii)**, EB shall have the right to cure such failure by issuing Capital Stock (other than Disqualified Capital Stock) to its equity holders for cash (the “Cure Right” and the proceeds of any exercise of the Cure Right, the “Cure Proceeds”), pursuant to an irrevocable written notice delivered to the Agent, and, upon receipt by the Borrowers of such Cure Proceeds within such fifteen (15) Business Day period, the financial covenants set forth in **Section 9.3.1** or **9.3.2**, as the case may be, shall be recalculated giving effect to the following pro forma adjustment:

(i) Adjusted EBITDA shall be increased, solely for the purpose of calculating the financial covenants set forth in **Section 9.3.1** or **9.3.2**, as the case may be, and not for any other purpose under this Agreement, by an amount equal to one hundred percent (100%) of the amount of the Cure Proceeds for the Fiscal Quarter with respect to which the Cure Right is exercised and each of the following three (3) Fiscal Quarters; and

(ii) If, after giving effect to the foregoing recalculations, the Obligors shall then be in compliance with the financial covenants set forth in **Section 9.3.1** or **9.3.2**, as the case may be, the Obligors shall be deemed to have complied with such financial covenants, as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and any Event of Default arising from such failure of the Borrowers to comply with the financial covenants set forth in **Section 9.3.1** or **9.3.2**, as the case may be, without any further action by any party hereto, be cured and deemed not to have occurred or be continuing hereunder.

Notwithstanding anything herein to the contrary, (A) the Cure Right may not be exercised in any consecutive Fiscal Quarters; (B) the Cure Right may be exercised no more than two (2)

times during any Fiscal Year and no more than five (5) times during the term of this Agreement; (C) the aggregate amount of Cure Proceeds shall be no greater than the amount required for purposes of complying with the financial covenant that is not being met in **Section 9.3.1** or **9.3.2**, as the case may be, (D) (x) prior to the Full Payment of the First Priority Debt, one hundred percent (100%) of Cure Proceeds shall be applied by the Borrower to pay the First Priority Debt, and thereafter, one hundred percent (100%) of the Cure Proceeds shall be applied by the Borrower to pay to each Lender its Pro Rata share, as and when received by such Borrower and as a mandatory prepayment of the Term Loans (and no Prepayment Premium shall be payable in respect thereof); provided, that the Consolidated Funded Debt of the Obligors shall not be reduced by the amount of such prepayment for either the Fiscal Quarter with respect to which the Cure Right is exercised or the following three (3) Fiscal Quarters for any purpose under this Agreement; and (E) upon the Agent's receipt of a notice from Holdings or the Borrower that it intends to exercise the Cure Right, neither the Agent nor any Lender shall exercise the right to accelerate the Loans and neither the Agent nor any Lender shall exercise any right to foreclose on or take possession of the Collateral solely on the basis of an Event of Default having occurred and being continuing on account of a failure to comply with the financial covenants set forth in **Section 9.3.1** or **9.3.2**, as the case may be, until the expiration of the fifteen (15) Business Day period referred to in the first sentence of this **Section 9.3.3** (unless prior to the expiration thereof, (x) the application of the Cure Right cured such Event of Default in accordance with the foregoing provision, or (y) any Obligor notifies the Agent or the Lenders that the Obligors do not intend to exercise such right).

SECTION 10. CONDITIONS PRECEDENT

10.1 Conditions Precedent to Initial Credit Extension.

Lenders shall not be required to fund the Term Loans, or otherwise extend credit to Borrowers, unless each of the following conditions has been satisfied:

10.1.1 Loan Documents. Each of the Loan Documents (other than the Loan Documents delivered prior to the date hereof) shall have been duly executed and delivered to Agent and the Lenders by each of the signatories thereto and accepted by Agent and Lenders and each Obligor shall be in compliance with all of the terms thereof (including all representations and warranties).

10.1.2 Minimum EBITDA; Senior Leverage Ratio; Total Leverage Ratio. The Agent and the Lenders shall have received satisfactory evidence, including a certificate of a Senior Officer of the Borrowers, that (a) the Adjusted EBITDA of the Obligors for the twelve (12) Fiscal Month period ended August 31, 2012, is not less than \$53,000,000; (b) the Consolidated Senior Leverage Ratio as of the Closing Date (calculated on a pro forma basis) for the twelve (12) Fiscal Month period ending on August 31, 2012, is not greater than 2.25 to 1.00; and (c) the Consolidated Total Leverage Ratio as of the Closing Date (calculated on a pro forma basis) for the twelve (12) month period ending on August 31, 2012, is not greater than 5.25 to 1.00.

10.1.3 UCC Financing Statements and Lien Searches. Agent and the Lenders shall have received copies of all filings to be made to perfect the Liens of Agent in the Collateral,

as well as UCC and Lien searches and other evidence in form and substance satisfactory to Agent and Lenders that there are no other Liens upon any Collateral except for Permitted Liens.

10.1.4 Organization Documents. Agent and the Lenders shall have received copies of the Organization Documents of each Obligor, and all amendments thereto, certified by the Secretary of State or other appropriate officials of the jurisdiction of Borrower's and each Obligor's states of organization; provided, however, that to the extent governmental certification is not available for any such Organization Document, such Organization Document shall be certified as true, completed and correct by a Senior Officer.

10.1.5 Certificates of Existence. Agent and the Lenders shall have received certificates of existence for each Obligor, issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization and each jurisdiction where the conduct of such Obligor's business activities or ownership of its Property necessitates qualification.

10.1.6 Opinion Letters. Agent and the Lenders shall have received a favorable, written opinion of (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as special counsel to Obligors and (ii) Nelson Mullins Riley & Scarborough LLP, local counsel to Borrowers organized in South Carolina, each in form and substance satisfactory to Agent.

10.1.7 Insurance. Agent and the Lenders shall have received certified copies of the property and casualty insurance policies of Borrowers with respect to the Collateral, or certificates of insurance with respect to such policies in form acceptable to Agent, and loss payable endorsements, in form reasonably satisfactory to Agent, naming Agent as loss payee with respect to each such policy and certified copies of Borrower's liability insurance policies, including product liability policies, together with endorsements naming Agent as an additional insured, all as required by the Loan Documents.

10.1.8 Dominion and Concentration Accounts. Agent and the Lenders shall be satisfied with the cash management system established by Borrowers and, subject to **Section 9.1.14**, shall have received the duly executed agreements with respect to each Dominion Account, with Borrowers' existing financial institutions for the collection or servicing of the Accounts.

10.1.9 Landlord Agreements. Subject to grace periods set forth on **Schedule 9.1.14**, Borrowers shall use commercially reasonable efforts to deliver to Agent the Landlord Agreements to be delivered pursuant to **Section 9.1.14** hereof.

10.1.10 Solvency. Agent and Lenders shall have received evidence satisfactory to them from one or more knowledgeable Senior Officers of each Borrower that, after giving effect to the financing under this Agreement and the other Transactions, each Borrower is Solvent.

10.1.11 Compliance with Laws and Other Agreements. Agent and the Lenders shall have determined or received assurances satisfactory to it that none of the Loan Documents or any of the transactions contemplated thereby violate any Applicable Law (including Environmental Laws), court order or agreement binding upon any Obligor.

10.1.12 No Material Adverse Change. No material adverse change, in the opinion of Lenders, in the business, assets, properties, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of any Borrower or any other Obligor shall have occurred since December 31, 2011.

10.1.13 Governmental Approval. Borrowers shall have obtained all material Governmental Approvals and third party approvals and consents necessary to effect the Transactions and the other transactions contemplated hereby.

10.1.14 Payment of Fees. Borrowers shall have paid, or made provision for the payment on the Closing Date of, all fees and expenses to be paid hereunder to Agent and Lenders on the Closing Date.

10.1.15 Satisfaction of Existing Debt. Agent and the Lenders shall have received evidence satisfactory to it that the Wellspring Debt (including any accrued interest and premiums, if any) has been terminated and paid in full and all documents executed or delivered in connection therewith have been terminated substantially simultaneously with the initial closing of the transactions hereunder.

10.1.16 Financial Statements. Agent and the Lenders shall have received (i) a pro forma balance sheet of Borrowers dated as of August 31, 2012 and giving effect to the Transactions, (ii) Projections of Borrowers through calendar year 2013 and annually thereafter through 2016, giving effect to the Transactions and evidencing Borrowers' ability to comply with **Section 9.3** hereof and (iii) interim financial statements for Borrowers as of August 31, 2012.

10.1.17 Subordination Agreement. Agent and the Lenders shall have received true and correct copies of the First Priority Debt Documents, in form and substance reasonably satisfactory to Agent and Lenders. Agent, on behalf of the Secured Parties, First Priority Agent and the lenders with respect to the First Priority Debt shall have executed and delivered the Subordination Agreement, in form and substance satisfactory to Agent and First Priority Agent.

10.1.18 Pledge and Security Agreement and Guaranties. Agent and the Lenders shall have received true and correct copies of the Pledge and Security Agreement and the Guaranties, each in form and substance satisfactory to Agent and the Lenders.

10.1.19 No Litigation. No action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or governmental instrumentality that in Lenders' judgment (i) could reasonably be expected to have a Material Adverse Effect upon Borrowers' business, assets, Properties, liabilities, operations, condition or prospects, or could impair Borrowers' ability to perform satisfactorily under this Agreement or any of the other Loan Documents or (ii) could reasonably be expected to materially and adversely affect this Agreement or any of the other Loan Documents or the transactions contemplated hereby or thereby.

10.1.20 Officer's Certificates. Agent and the Lenders shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of each

Borrower certifying that, after giving effect to the Term Loans and transactions hereunder, (i) such Borrower is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 8** are true and correct in all material respects; provided, however, that any representation or warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects; and (iv) such Borrower has complied with all agreements and conditions to be satisfied by it under the Loan Documents.

10.2 Inapplicability of Conditions.

None of the conditions precedent set forth in **Section 10.1** shall be a condition to the obligation of each Lender to pay any amount payable to Agent or any other Lender pursuant to this Agreement.

SECTION 11. EVENTS OF DEFAULT; RIGHTS AND REMEDIES ON DEFAULT

11.1 Events of Default.

The occurrence or existence of any one or more of the following events or conditions shall constitute an “Event of Default” (each of which Events of Default shall be deemed to exist unless and until waived by Agent and Lenders in accordance with the provisions of **Section 12.9** hereof):

11.1.1 Payment of Obligations. Borrowers shall fail to pay any of the Obligations on the due date thereof (whether due at stated maturity, on demand, upon acceleration or otherwise).

11.1.2 Misrepresentations. Any representation, warranty or other written statement to Agent or any Lender by or on behalf of any Obligor, whether made in or furnished in compliance with or in reference to any of the Loan Documents, proves to have been false or misleading in any material respect when made or furnished or when reaffirmed pursuant to **Section 8.2** hereof.

11.1.3 Breach of Specific Covenants. Borrowers shall fail or neglect to perform, keep or observe any covenant contained in **Sections 6.6, 9.1.1, 9.1.2(iv), 9.1.3, 9.1.5, 9.1.6, 9.1.8, 9.1.13, 9.2 or 9.3** hereof on the date that Borrowers are required to perform, keep or observe such covenant.

11.1.4 Breach of Other Covenants. A Borrower shall fail or neglect to perform, keep or observe any covenant contained in this Agreement (other than a covenant which is dealt with specifically elsewhere in **Section 11.1** hereof) and the breach of such other covenant is not cured to Agent’s and Required Lenders’ satisfaction within thirty (30) days after the sooner to occur of any Senior Officer’s receipt of notice of such breach from Agent or the date on which such failure or neglect first becomes actually known to any Senior Officer; provided, however, that such notice and opportunity to cure shall not apply in the case of any failure to perform, keep or observe any covenant which is not capable of being cured at all or within such 30-day period or which is a willful and knowing breach by such Borrower.

11.1.5 Default Under Security Documents/Other Agreements. A Borrower or any other Obligor shall default in the due and punctual observance or performance (taking into account any applicable grace periods) of any liability or obligation to be observed or performed by it under any of the Other Agreements or Security Documents.

11.1.6 Other Defaults. (i) The failure to pay, on the part of any Obligor, (a) the stated principal amount of the First Priority Debt at the final stated maturity beyond any applicable cure or grace period, or (b) any other Debt of any Obligor (other than the Obligations), or (ii) the acceleration of the final stated maturity of any such Debt (which acceleration is not rescinded, annulled or otherwise cured within 30 Business Days of receipt by any Obligor of notice of any such acceleration) if, in each case in clauses (i) and (ii), the aggregate principal amount of such Debt is in excess of \$1,150,000.

11.1.7 Uninsured Losses. Any loss (other than a loss relating to an Account), theft, damage or destruction of any of the Collateral not fully covered (subject to such deductibles as Agent shall have permitted) by insurance if the aggregate amount not covered by insurance exceeds \$1,150,000 in any Fiscal Year.

11.1.8 Invalidity of Subordination Provisions, etc. Any subordination provision in any document or instrument governing Subordinated Debt, or any subordination provision in any guaranty by any Obligor of any Subordinated Debt, shall cease to be in full force and effect, or any Obligor or any other Person (including the holder of any applicable Subordinated Debt) shall contest in any manner the validity, binding nature or enforceability of any such provision.

11.1.9 Solvency. Any Obligor shall cease to be Solvent.

11.1.10 Insolvency Proceedings. Any Insolvency Proceeding shall be commenced by any Obligor; an Insolvency Proceeding is commenced against any Obligor and any of the following events occur: such Obligor consents to the institution of the Insolvency Proceeding against it, the petition commencing the Insolvency Proceeding is not timely contested by such Obligor, the petition commencing the Insolvency Proceeding is not dismissed within thirty (30) days after the date of the filing thereof, an interim trustee is appointed to take possession all or a substantial portion of the Properties of such Obligor or to operate all or any substantial portion of the business of such Obligor or an order for relief shall have been issued or entered in connection with such Insolvency Proceeding; or any Obligor shall make an offer of settlement extension or composition to its unsecured creditors generally.

11.1.11 Business Disruption; Condemnation. There shall occur a cessation of a substantial part of the business of any Obligor for a period which may be reasonably expected to have a Material Adverse Effect; or any Obligor shall suffer the loss or revocation of any Governmental Approvals now held or hereafter acquired by such Obligor which is material to the operations of such Borrower or necessary to the continued or lawful operation of its business; or any Obligor shall be enjoined, restrained or in any way prevented by court, governmental or administrative order from conducting all or any material part of its business affairs; or any material lease or agreement pursuant to which any Obligor leases or occupies any premises on which any Collateral is located shall be canceled or terminated prior to the expiration of its stated

term and such cancellation or termination has a Material Adverse Effect; or any material part of the Collateral shall be taken through condemnation or the value of such Property shall be materially impaired through condemnation.

11.1.12 Change of Control. There shall occur any Change of Control.

11.1.13 ERISA. An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which could reasonably be expected to have a Material Adverse Effect or that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC in an amount in excess of \$1,150,000, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; or an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan.

11.1.14 Challenge to Loan Documents. Any Obligor or any of its Affiliates shall challenge or contest in any action, suit or proceeding the validity or enforceability of any of the Loan Documents, the legality or enforceability of any of the Obligations or the perfection or priority of any Lien granted to Agent, or any of the Loan Documents ceases to be in full force or effect for any reason other than a full or partial waiver or release by Agent and Lenders in accordance with the terms thereof.

11.1.15 Judgment. One or more judgments or orders for the payment of money in an amount that exceeds, individually or in the aggregate, \$1,150,000 shall be entered against a Borrower or any other Obligor and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

11.1.16 Criminal Forfeiture. Any Obligor shall be convicted under any criminal law that could lead to a forfeiture of any Property of such Obligor.

11.2 Acceleration of Obligations.

Without in any way limiting the right of Agent to demand payment of any portion of the Obligations payable on demand in accordance with this Agreement:

11.2.1 Upon or at any time after the occurrence of an Event of Default (other than pursuant to **Section 11.1.10** hereof) and for so long as such Event of Default shall exist, Agent may in its discretion (and, upon receipt of written instructions to do so from the Required Lenders, shall) declare the principal of and any accrued interest on the Term Loans and all other Obligations owing under any of the Loan Documents to be, whereupon the same shall become without further notice or demand (all of which notice and demand Borrowers expressly waives), forthwith due and payable and Borrowers shall forthwith pay to each Lender its Pro Rata share of the entire principal of and accrued and unpaid interest on the Term Loans and other Obligations plus reasonable attorneys' fees and expenses if such principal and interest are collected by or through an attorney-at-law.

11.2.2 Upon the occurrence of an Event of Default specified in **Section 11.1.10** hereof, all of the Obligations shall become automatically due and payable without declaration, notice or demand by Agent to or upon Borrowers.

11.3 Other Remedies.

Upon and after the occurrence of an Event of Default and for so long as such Event of Default shall exist, Agent may in its discretion (and, upon receipt of written direction of Lenders, shall) exercise from time to time the following rights and remedies (without prejudice to the rights of Agent or any Lender to enforce its claim against any or all Obligor(s)):

11.3.1 All of the rights and remedies of a secured party under the UCC or under other Applicable Law, and all other legal and equitable rights to which Agent may be entitled under any of the Loan Documents, all of which rights and remedies shall be cumulative and shall be in addition to any other rights or remedies contained in this Agreement or any of the other Loan Documents, and none of which shall be exclusive.

11.3.2 The right to collect all amounts at any time payable to a Borrower from any Account Debtor or other Person at any time indebted to a Borrower.

11.3.3 The right to take immediate possession of any of the Collateral, and to (i) require Borrowers to assemble the Collateral, at Borrower's expense, and make it available to Agent at a place designated by Agent which is reasonably convenient to both parties, and (ii) enter any premises where any of the Collateral shall be located and to keep and store the Collateral on said premises until sold (and if said premises be the Property of a Borrower, then such Borrower agrees not to charge Agent or any Lender for storage thereof).

11.3.4 The right to sell or otherwise dispose of all or any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale or sales, with such notice as may be required by Applicable Law, in lots or in bulk, for cash or on credit, all as Agent, in its sole discretion, may deem advisable. Each Borrower agrees that any requirement of notice to such Borrower or any other Obligor of any proposed public or private sale or other disposition of Collateral by Agent shall be deemed reasonable notice thereof if given at least ten (10) days prior thereto, and such sale may be at such locations as Agent may designate in said notice. Agent shall have the right to conduct such sales on Borrower's or any other Obligor's premises, without charge therefor, and such sales may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of the Collateral, or any part thereof, for cash, credit or any combination thereof, and Agent may purchase all or any part of the Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of such purchase price, may set off the amount of such price against the Obligations. The proceeds realized from the sale or other disposition of any Collateral may be applied, after allowing two (2) Business Days for collection, first to any Extraordinary Expenses incurred by Agent, second to interest accrued with respect to any of the Obligations; and third, to the principal balance of the Obligations. If any deficiency shall arise, Obligor(s) shall remain jointly and severally liable to Agent and Lenders therefor.

11.3.5 The right to the appointment of a receiver, without notice of any kind whatsoever, to take possession of all or any portion of the Collateral and to exercise such rights and powers as the court appointing such receiver shall confer upon such receiver.

To the fullest extent assignable by Borrowers, Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (exercisable without payment of royalty or other compensation to any Obligor or any other Person) any or all of Borrower's Intellectual Property and all of Borrower's computer hardware and software trade secrets, brochures, customer lists, promotional and advertising materials, labels, and packaging materials, and any Property of a similar nature, in advertising for sale, marketing, selling and collecting and in completing the manufacturing of any Collateral, and Borrower's rights under all licenses and all franchise agreements shall inure to Agent's benefit.

11.4 Setoff.

Subject to the Subordination Agreement, and in addition to any Liens granted under any of the Loan Documents and any rights now or hereafter available under Applicable Law, Agent, each Lender (and each of their respective Affiliates) is hereby authorized by each Borrower at any time that an Event of Default exists, without notice to Borrowers or any other Person (any such notice being hereby expressly waived) to set off and to appropriate and to apply any and all deposits, general or special (including Debt evidenced by certificates of deposit whether matured or unmatured (but not including trust accounts)) and any other Debt at any time held or owing by Agent, such Lender or any of their Affiliates to or for the credit or the account of Borrowers against and on account of the Obligations of Borrowers arising under the Loan Documents to Agent, such Lender or any of their Affiliates including all claims of any nature or description arising out of or in connection with this Agreement, irrespective of whether or not (i) Agent or such Lender shall have made any demand hereunder, (ii) Agent, at the request or with the consent of Lenders, shall have declared the principal of and interest on the Term Loans and other amounts due hereunder to be due and payable as permitted by this Agreement and even though such Obligations may be contingent or unmatured or (iii) the Collateral for the Obligations is adequate. Notwithstanding the foregoing, each of Agent and Lenders agree with each other that it shall not, without the express consent of Lenders, and that it shall (to the extent that (x) it is lawfully entitled to do so and (y) the accounts are not subject to Permitted Liens in favor of Agent or such Lender as set forth in **Section 9.2.5(ix)**) upon the request of Lenders, exercise its setoff rights hereunder against any accounts of Borrowers now or hereafter maintained with Agent such Lender or any Affiliate of any of them, but Borrowers shall have no claim or cause of action against Agent or any Lender for any setoff made without the consent of Lenders and the validity of any such setoff shall not be impaired by the absence of such consent. If any party (or its Affiliate) exercises the right of setoff provided for hereunder, such party shall be obligated to share any such setoff in the manner and to the extent required by **Section 12.5**.

11.5 Remedies Cumulative; No Waiver.

11.5.1 All covenants, conditions, provisions, warranties, guaranties, indemnities, and other undertakings of Borrowers contained in this Agreement and the other Loan Documents, or in any document referred to herein or contained in any agreement supplementary hereto or in any schedule or contained in any other agreement between Agent or

any Lender and Borrowers, heretofore, concurrently, or hereafter entered into, shall be deemed cumulative to and not in derogation or substitution of any of the terms, covenants, conditions, or agreements of Borrowers herein contained. The rights and remedies of Agent and Lenders under this Agreement and the other Loan Documents shall be cumulative and not exclusive of any rights or remedies that Agent or any Lender would otherwise have. All such rights and remedies shall continue in full force and effect until full payment of all Obligations.

11.5.2 No waiver or course of dealing shall be established by (i) the failure or delay of Agent or any Lender to require strict performance by Borrowers with any terms of the Loan Documents, or to exercise any rights or remedies with respect to Collateral or otherwise; or (ii) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. It is expressly acknowledged by Borrowers that any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

11.5.3 If Agent or any Lender shall accept performance by Borrowers, in whole or in part, of any obligation that Borrowers are required by any of the Loan Documents to perform only when a Default or Event of Default exists, or if Agent or any Lender shall exercise any right or remedy under any of the Loan Documents that may not be exercised other than when a Default or Event of Default exists, Agent's or Lender's acceptance of such performance by Borrowers or Agent's or Lender's exercise of any such right or remedy shall not operate to waive any such Event of Default or to preclude the exercise by Agent or any Lender of any other right or remedy, unless otherwise expressly agreed in writing by Agent or such Lender, as the case may be.

SECTION 12. AGENT

12.1 Appointment, Authority and Duties of Agent.

12.1.1 Appointment and Authority. Each Secured Party hereby irrevocably appoints and designates Prospect Capital Corporation as Agent under all the Loan Documents. Agent may, and each Secured Party by its acceptance of a Term Loan shall be deemed irrevocably to have authorized Agent to, enter into all Loan Documents to which Agent is or is intended to be a party and all amendments hereto and all Security Documents at any time executed by Borrowers, for the benefit of the Secured Parties, except as otherwise provided in this **Section 12**, to exercise such rights and powers under this Agreement and the other Loan Documents as are specifically delegated to Agent by the terms hereof and thereof, together with such other rights and powers as are reasonably incidental thereto. Each Secured Party agrees that any action taken by Agent or Lenders in accordance with the provisions of this Agreement or the other Loan Documents, and the exercise by Agent or Lenders of any 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 Lenders. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive right and authority to (i) execute and deliver as Agent each Loan Document and accept delivery of each such agreement delivered by Borrowers or any other Obligor; (ii) act as collateral agent for Secured Parties for purposes of the perfection of all security interests and Liens created by this Agreement or the Security Documents with respect to all material items of the Collateral and, subject to the direction of Required Lenders or other

Secured Parties, for all other purposes stated therein; provided, however, that Agent hereby appoints, authorizes and directs each Secured Party to act as a collateral sub-agent for Agent and the other Lenders for purposes of the perfection of all security interests and Liens with respect to Borrower's Deposit Accounts maintained with, and all cash and Cash Equivalents held by, such Secured Party; (iii) subject to the direction of Required Lenders or other Secured Parties, manage, supervise or otherwise deal with the Collateral; and (iv) except as may be otherwise specifically restricted by the terms of this Agreement and subject to the direction of Required Lenders or other Secured Parties, exercise all remedies given to Agent with respect to any of the Collateral under the Loan Documents relating thereto, Applicable Law or otherwise. The duties of Agent shall be ministerial and administrative in nature, and Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship with any Secured Party (or any Lender's participants).

12.1.2 Duties. Agent (which term, as used in this sentence, shall include reference to Agent's officers, directors, employees, attorneys, agents and Affiliates and to the officers, directors, employees, attorneys and agents of Agent's Affiliates) shall not: (i) have any duties or responsibilities except those expressly set forth in this Agreement and the other Loan Documents or (ii) be required to take, initiate or conduct any litigation, foreclosure or collection proceedings hereunder or under any of the other Loan Documents except to the extent directed to do so by Lenders during the continuance of any Event of Default. The conferral upon Agent of any right hereunder shall not imply a duty on Agent's part to exercise any such right unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3 Agent Professionals. Agent may perform any of its duties by or through its agents and employees and may employ one or more Agent Professionals and shall not be responsible for the negligence or misconduct of any such Agent Professionals selected by it with reasonable care. Borrowers shall promptly (and in any event, **on demand**) reimburse Agent for all reasonable expenses (including all Extraordinary Expenses) incurred by Agent pursuant to any of the provisions hereof or of any of the other Loan Documents or in the execution of any of Agent's duties hereby or thereby created or in the exercise of any right or power herein or therein imposed or conferred upon it or Lenders (excluding, however, general overhead expenses), and each Lender agrees promptly to pay to Agent, **on demand**, such Lender's Pro Rata share of any such reimbursement for expenses (including Extraordinary Expenses) that is not timely made by Borrowers to Agent.

12.1.4 Instructions of Required Lenders. The rights, remedies, powers and privileges conferred upon Agent hereunder and under the other Loan Documents may be exercised by Agent without the necessity of the joinder of any other parties unless otherwise required by Applicable Law. Agent may request instructions from the Required Lenders or other Secured Parties with respect to any act or action (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of

Required Lenders. Without limiting the foregoing, no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting hereunder or under any of the Loan Documents pursuant to or in accordance with the instructions of Required Lenders except for Agent's own gross negligence or willful misconduct in connection with any action taken by it. Notwithstanding anything to the contrary contained in this Agreement, Agent shall not be required to take any action that is in its opinion contrary to Applicable Law or the terms of any of the Loan Documents or that would in its reasonable opinion subject it or any of its officers, employees or directors to personal liability; provided, however, that if Agent shall fail or refuse to take action that is not contrary to Applicable Law or to any of the terms of any of the Loan Documents even if such action in Agent's opinion would subject it to potential liability, Lenders may remove Agent and appoint a successor Agent in the same manner and with the same effects as is provided in this Agreement with respect to Agent's resignation.

12.2 Agreements Regarding Collateral.

Secured Parties hereby irrevocably authorize Agent, at its option and in its discretion, to release any Lien upon any Collateral (i) upon payment or satisfaction of all of the Obligations, (ii) constituting Equipment or Inventory sold or disposed of in accordance with the terms of **Section 7.4.2** of this Agreement if a Borrower certifies to Agent that the disposition is made in compliance with the terms **Section 7.4.2** of this Agreement (and Agent may rely conclusively on any such certificate, without further inquiry), or (iii) subject to **Section 12.9**, if approved or ratified by Lenders; provided, however, that Agent (without the consent of any Secured Party) shall be authorized to release any Lien upon any Collateral having a Net Book Value of less than \$500,000 in the aggregate during any 12-month period. Agent shall have no obligation whatsoever to any of Secured Parties to assure that any of the Collateral exists or is owned by a Borrower or is cared for, protected or insured or has been encumbered, or that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected or enforced or entitled to any particular priority or to exercise any duty of care with respect to any of the Collateral.

12.3 Reliance By Agent.

Agent shall be entitled to rely, and shall be fully protected in so relying, upon any certification, notice or other communication (including any thereof by telephone, telex, telegram, telecopier message or cable) believed by it to be genuine and correct and to have been signed, sent or made by or on behalf of the proper Person or Persons, and upon advice and statements of Agent Professionals selected by Agent. As to any matters not expressly provided for by this Agreement or any of the other Loan Documents, Agent shall in all cases be fully protected in acting or refraining from acting hereunder and thereunder in accordance with the instructions of Lenders, and such instructions of Lenders and any action taken or failure to act pursuant thereto shall be binding upon Lenders. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

12.4 Action Upon Default.

Agent shall not be deemed to have knowledge of the occurrence of a Default or an Event of Default or of any failure to satisfy any condition in **Section 10**, unless it has received written notice from Lenders or Borrowers specifying the occurrence and nature of such Default or Event of Default or failure of such condition. If Agent shall receive such a notice of a Default or an Event of Default or shall otherwise acquire actual knowledge of any Default or Event of Default, Agent shall promptly notify Lenders in writing and Agent shall take such action and assert such rights under this Agreement and the other Loan Documents, or shall refrain from taking such action and asserting such rights, as Lenders shall direct from time to time. If any Lender shall receive a notice of a Default or an Event of Default or shall otherwise acquire actual knowledge of any Default or Event of Default, such Lender shall promptly notify Agent and the other Lenders in writing. As provided in **Section 12.3** hereof, Agent shall not be subject to any liability by reason of acting or refraining to act pursuant to any request of Lenders except for its own willful misconduct or gross negligence in connection with any action taken by it. Each Secured Party agrees that, except as otherwise provided in any of the Loan Documents and without the prior written consent of Lenders, it will not take any legal action or institute any action or proceeding against any Obligor with respect to any of the Obligations or Collateral or accelerate or otherwise enforce its portion of the Obligations. Without limiting the generality of the foregoing, no Secured Party may exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar sales or dispositions of any of the Collateral except as authorized by Lenders. Notwithstanding anything to the contrary set forth in this **Section 12.4** or elsewhere in this Agreement, each Lender shall be authorized to take such action to preserve or enforce its rights against any Obligor where a deadline or limitation period is otherwise applicable and would, absent the taken of specified action, bar the enforcement of Obligations held by such Lender against such Obligor, including the filing of proofs of claim in any Insolvency Proceeding.

12.5 Ratable Sharing.

If any Lender shall obtain any payment or reduction (including any amounts received as adequate protection of a bank account deposit treated as cash collateral under the Bankruptcy Code) of any Obligation of Borrowers hereunder (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) in excess of its Pro Rata share of payments or reductions on account of such Obligations obtained by all of Lenders, such Lender shall forthwith (i) notify the other Lenders and Agent of such receipt and (ii) purchase from the other Lenders such participations in the affected Obligations as shall be necessary to cause such purchasing Lender to share the excess payment or reduction, net of costs incurred in connection therewith, on a Pro Rata basis; provided, however, that if all or any portion of such excess payment or reduction is thereafter recovered from such purchasing Lender or additional costs are incurred, the purchase shall be rescinded and the purchase price restored to the extent of such recovery or such additional costs, but without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this **Section 12.5** may, to the fullest extent permitted by Applicable Law, exercise all of 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 such Borrower in the amount of such participation.

12.6 Indemnification of Agent Indemnitees.

12.6.1 Each Lender agrees to indemnify and defend the Agent Indemnitees (to the extent not reimbursed by Borrowers under this Agreement, but without limiting the indemnification obligation of Borrowers under this Agreement), on a Pro Rata basis, and to hold each of the Agent Indemnitees harmless from and against, any and all Claims which may be imposed on, incurred by or asserted against any of the Agent Indemnitees in any way related to or arising out of this Agreement or any of the other Loan Documents or any other document contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including the costs and expenses which Borrowers are obligated to pay under **Section 14.2** hereof) or the enforcement of any of the terms hereof or thereof or of any such other documents; provided, however, that no Lender shall be liable to any Agent Indemnitee for any of the foregoing to the extent that they result solely from the willful misconduct or gross negligence of such Agent Indemnitee.

12.6.2 Without limiting the generality of the foregoing provisions of this **Section 12.6**, if Agent should be sued by any receiver, trustee in bankruptcy, debtor-in-possession or other Person on account of any alleged preference or fraudulent transfer received or alleged to have been received from a Borrower or any other Obligor as the result of any transaction under the Loan Documents, then in such event any monies paid by Agent in settlement or satisfaction of such suit, together with all Extraordinary Expenses incurred by Agent in the defense of same, shall be promptly reimbursed to Agent by Lenders to the extent of each Lender's Pro Rata share.

12.6.3 Without limiting the generality of the foregoing provisions of this **Section 12.6**, if at any time (whether prior to or after the Commitment Termination Date) any action or proceeding shall be brought against any of the Agent Indemnitees by an Obligor or by any other Person claiming by, through or under an Obligor, to recover damages for any act taken or omitted by Agent under any of the Loan Documents or in the performance of any rights, powers or remedies of Agent against any Obligor, any Account Debtor, the Collateral or with respect to any Term Loans, or to obtain any other relief of any kind on account of any transaction involving any Agent Indemnitees under or in relation to any of the Loan Documents, each Lender agrees to indemnify, defend and hold the Agent Indemnitees harmless with respect thereto and to pay to the Agent Indemnitees such Lender's Pro Rata share of such amount as any of the Agent Indemnitees shall be required to pay by reason of a judgment, decree, or other order entered in such action or proceeding or by reason of any compromise or settlement agreed to by the Agent Indemnitees, including all interest and costs assessed against any of the Agent Indemnitees in defending or compromising such action, together with attorneys' fees and other legal expenses paid or incurred by the Agent Indemnitees in connection therewith; provided, however, that no Lender shall be liable to any Agent Indemnitee for any of the foregoing to the extent that they arise solely from the willful misconduct or gross negligence of such Agent Indemnitee. In Agent's discretion, Agent may also reserve for or satisfy any such judgment, decree or order from proceeds of Collateral prior to any distributions therefrom to or for the account of Lenders.

12.7 Limitation on Responsibilities of Agent.

Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall have received further assurances to its satisfaction from Lenders of their indemnification

obligations under **Section 12.6** hereof against any and all Claims which may be incurred by Agent by reason of taking or continuing to take any such action. Agent shall not be liable to any Secured Party (or any Lender's participants) for any action taken or omitted to be taken under or in connection with this Agreement or the other Loan Documents except as a result of actual gross negligence or willful misconduct on the part of Agent. Agent does not assume any responsibility for any failure or delay in performance or breach by any Obligor, any Lender or other Secured Party of its obligations under this Agreement or any of the other Loan Documents. Agent does not make to Lenders or other Secured Parties, and no Lender makes to Agent or the other Lenders or Secured Parties, any express or implied warranty, representation or guarantee with respect to the Term Loans, the Collateral, the Loan Documents or any Obligor. Neither Agent nor any of its officers, directors, employees, attorneys or agents shall be responsible to Secured Parties, and no Secured Party nor any of its agents, attorneys or employees shall be responsible to Agent or the other Secured Parties, for: (i) any recitals, statements, information, representations or warranties contained in any of the Loan Documents or in any certificate or other document furnished pursuant to the terms hereof; (ii) the execution, validity, genuineness, effectiveness or enforceability of any of the Loan Documents; (iii) the validity, genuineness, enforceability, collectability, value, sufficiency or existence of any Collateral, or the perfection or priority of any Lien therein; or (iv) the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or any Account Debtor. Neither Agent nor any of its officers, directors, employees, attorneys or agents shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any Obligor of any of the duties or agreements of such Obligor under any of the Loan Documents or the satisfaction of any conditions precedent contained in any of the Loan Documents. Agent may consult with and employ legal counsel, accountants and other experts and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts.

12.8 Successor Agent and Co-Agents.

12.8.1 Subject to the appointment and acceptance of a successor Agent as provided below, Prospect Capital Corporation may resign as Agent at any time by giving at least thirty (30) days written notice thereof to each Lender and Borrowers. Upon receipt of any notice of such resignation, Required Lenders shall have the right to appoint a successor Agent which shall be (i) a Lender, (ii) a United States based affiliate of a Lender, or (iii) a commercial bank that is organized under the laws of the United States or of any State thereof and has a combined capital surplus of at least \$200,000,000 and, provided no Default or Event of Default then exists, is reasonably acceptable to Borrowers (and for purposes hereof, any successor to Prospect Capital Corporation shall be deemed acceptable to Borrowers). Upon the acceptance by a successor Agent of an appointment to serve as an Agent hereunder, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent without further act, deed or conveyance, and the retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation hereunder as Agent, the provisions of this **Section 12** (including the provisions of **Section 12.6** hereof) shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent. Notwithstanding anything to the contrary contained in this Agreement, any successor by merger or acquisition of the stock or assets of Prospect Capital Corporation

shall continue to be Agent hereunder unless such successor shall resign in accordance with the provisions hereof.

12.8.2 It is the purpose of this Agreement that there shall be no violation of any Applicable Law denying or restricting the right of financial institutions to transact business as agent or otherwise in any jurisdiction. It is recognized that, in case of litigation under any of the Loan Documents, or in case Agent deems that by reason of present or future laws of any jurisdiction Agent might be prohibited from exercising any of the powers, rights or remedies granted to Agent or Lenders hereunder or under any of the Loan Documents or from holding title to or a Lien upon any Collateral or from taking any other action which may be necessary hereunder or under any of the Loan Documents, Agent may appoint an additional Person as a separate collateral agent or co-collateral agent which is not so prohibited from taking any of such actions or exercising any of such powers, rights or remedies. If Agent shall appoint an additional Person as a separate collateral agent or co-collateral agent as provided above, each and every remedy, power, right, claim, demand or cause of action intended by any of the Loan Documents to be exercised by or vested in or conveyed to Agent with respect thereto shall be exercisable by and vested in such separate collateral agent or co-collateral agent, but only to the extent necessary to enable such separate collateral agent or co-collateral agent to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate collateral agent or co-collateral agent shall run to and be enforceable by either of them. Should any instrument from Lenders be required by the separate collateral agent or co-collateral agent so appointed by Agent in order more fully and certainly to vest in and confirm to him or it such rights, powers, duties and obligations, any and all of such instruments shall, on request, be executed, acknowledged and delivered by Lenders whether or not a Default or Event of Default then exists. In case any separate collateral agent or co-collateral agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, duties and obligations of such separate collateral agent or co-collateral agent, so far as permitted by Applicable Law, shall vest in and be exercised by Agent until the appointment of a new collateral agent or successor to such separate collateral agent or co-collateral agent.

12.9 Consents, Amendments and Waivers.

12.9.1 No amendment or modification of any provision of this Agreement shall be effective without the prior written agreement of Required Lenders and Borrowers, and no waiver of any Default or Event of Default shall be effective without the prior written consent of Required Lenders; provided, however, that (i) without the prior written consent of Agent, no amendment or waiver shall be effective with respect to any provision in any of the Loan Documents (including this **Section 12**) to the extent such provision relates to the rights, duties or immunities of Agent; (ii) without the prior written consent of each affected Lender, no modification shall be effective that would reduce the amount of, or waive or delay payment of, any principal (excluding mandatory prepayments (other than at the Maturity Date)), interest, fees, Yield Maintenance Premium or other amounts payable to such Lender hereunder or under any other Loan Document; and (iii) without the prior written consent of all Lenders, no modification shall be effective that would (a) extend the Maturity Date; (b) alter **Sections 4.6, 6.1** (except to add Collateral), **12.5** or **12.9**; (c) amend the definitions of Pro Rata or Required Lenders; (d) release Collateral with a book value greater than \$1,500,000 during any calendar

year, except as currently contemplated by the Loan Documents; (e) release any Obligor from liability for any Obligations, if such Obligor is Solvent at the time of the release; (f) increase the amount of the Term Loans or any Lender's Commitment Percentage; (g) subordinate all or any portion of the Term Loans to any Debt (other than the First Priority Debt in accordance with the Subordination Agreement), or (h) permit any Obligor to assign or transfer any of its rights or obligations under any of the Loan Documents other than in connection with a transaction permitted hereunder. Any waiver or consent granted by Lenders hereunder shall be effective only if in writing and then only in the specific instance and for the specific purpose for which it was given.

12.9.2 In connection with any proposed amendment to any of the Loan Documents or waiver of any of the terms thereof or any Default or Event of Default thereunder, Borrowers shall not solicit, request or negotiate for or with respect to any such proposed amendment or waiver of any of the provisions of this Agreement or any of the other Loan Documents unless each Lender shall be informed thereof by Borrowers or Agent (to the extent known by Agent) and shall be afforded an opportunity of considering the same and supplied by Borrowers with sufficient information to enable it to make an informed decision with respect thereto. Borrowers will not, directly or indirectly, pay or cause to be paid any remuneration or other thing of value, whether by way of supplemental or additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for or as an inducement to the consent to or agreement by such Lender with any waiver or amendment of any of the terms and provisions of this Agreement or any of the other Loan Documents unless such remuneration or thing of value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders.

12.10 Due Diligence and Non-Reliance.

Each Lender hereby acknowledges and represents that it has, independently and without reliance upon Agent or the other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund the Term Loans to be made by it hereunder and each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, the Collateral and each Obligor. Each Secured Party hereby further acknowledges and represents that the other Secured Parties have not made any representations or warranties to it concerning any Obligor, any of the Collateral or the legality, validity, sufficiency or enforceability of any of the Loan Documents. Each Secured Party also hereby acknowledges that it will, independently and without reliance upon the other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making the Term Loans and in taking or refraining to take any other action under this Agreement or any of the other Loan Documents. Except for notices, reports and other information expressly required to be furnished to any Secured Party by Agent hereunder, Agent shall not have any duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or any of its Affiliates.

12.11 Representations and Warranties of Lenders.

By its execution of this Agreement, each Lender hereby represents and warrants to Borrowers and the other Lenders that it has the power to enter into and perform its obligations under this Agreement and the other Loan Documents, and that it has taken all necessary and appropriate action to authorize its execution and performance of this Agreement and the other Loan Documents to which it is a party, each of which will be binding upon it and the obligations imposed upon it herein or therein will be enforceable against it in accordance with the respective terms of such documents.

12.12 Several Obligations.

The obligations and commitments of each Lender under this Agreement and the other Loan Documents are several and neither Agent nor any Lender shall be responsible for the performance by the other Lenders of its obligations or commitments hereunder or thereunder. Notwithstanding any liability of Lenders stated to be joint and several to third Persons under any of the Loan Documents, such liability shall be shared, as among Lenders, Pro Rata.

12.13 Individual Capacities.

With respect to its obligation to lend under this Agreement and each Term Loan issued to it, Agent shall have the same rights and powers hereunder and under the other Loan Documents as any other Lender or holder of a Term Loan and may exercise the same as though it were not performing the duties specified herein; and the terms “Lenders,” “Required Lender” or any similar term shall, unless the context clearly otherwise indicates, include Agent in its capacity as a Lender.

12.14 No Third Party Beneficiaries.

This **Section 12** is not intended to confer any rights or benefits upon Borrowers or any other Person except Secured Parties and Agent, and no Person (including Borrowers) other than Secured Parties and Agent shall have any right to enforce any of the provisions of this **Section 12** except as expressly provided in **Section 12.16** hereof. As between Borrowers and Agent, any action that Agent may take or purport to take on behalf of Secured Parties under any of the Loan Documents shall be conclusively presumed to have been authorized and approved by Secured Parties as herein provided.

12.15 Notice of Transfer.

Agent may deem and treat a Lender party to this Agreement as the owner of such Lender’s portion of the Term Loans for all purposes, unless and until a written notice of the assignment or transfer thereof executed by such Lender has been received by Agent.

12.16 Remittance of Payments and Collections.

12.16.1 All payments by any Lender to Agent shall be made not later than the time set forth elsewhere in this Agreement on the Business Day such payment is due; provided, however, that if such payment is due on demand by Agent and such demand is made on the paying Lender after 11:00 a.m. on such Business Day, then payment shall be made by 11:00 a.m.

on the next Business Day. Payment by Agent to any Lender shall be made by wire transfer, promptly following Agent's receipt of funds for the account of such Lender and in the type of funds received by Agent; provided, however, that if Agent receives such funds at or prior to 12:00 noon, Agent shall pay such funds to such Lender by 2:00 p.m. on such Business Day, but if Agent receives such funds after 12:00 noon, Agent shall pay such funds to such Lender by 2:00 p.m. on the next Business Day.

12.16.2 With respect to the payment of any funds from Agent to a Lender or from a Lender to Agent, the party failing to make full payment when due pursuant to the terms hereof shall, on demand by the other party, pay such amount together with interest thereon at the Federal Funds Rate. In no event shall Borrowers be entitled to receive any credit for any interest paid by a Lender to Agent, nor shall any Defaulting Lender be entitled to interest on any amounts held by Agent pursuant to **Section 3.2**.

12.16.3 If Agent pays any amount to a Lender in the belief or expectation that a related payment has been or will be received by Agent from an Obligor and such related payment is not received by Agent, then Agent shall be entitled to recover such amount from each Lender that receives such amount. If Agent determines at any time that any amount received by it under this Agreement or any of the other Loan Documents must be returned to an Obligor or paid to any other Person pursuant to any Applicable Law, court order or otherwise, then, notwithstanding any other term or condition of this Agreement or any of the other Loan Documents, Agent shall not be required to distribute such amount to any Lender.

12.17 Subordination Agreement.

12.17.1 Each Lender hereby agrees to be bound by the terms of the Subordination Agreement.

12.17.2 Each Lender (and each person that becomes a Lender hereunder pursuant to **Section 13.3**) agrees that Agent may take such actions on its behalf as is contemplated by the terms of the Subordination Agreement.

12.17.3 Notwithstanding anything contained herein to the contrary, the Liens granted to Agent, for the benefit of the Secured Parties, pursuant to this Agreement and the other Loan Documents, and the exercise of any right or remedy by Agent, for the benefit of the Secured Parties, under this Agreement and the other Loan Documents (other than the Subordination Agreement), are subject to the provisions of the Subordination Agreement. In the event of any conflict between the terms of the Subordination Agreement and this Agreement and the other Loan Documents (other than the Subordination Agreement), the terms of the Subordination Agreement shall govern and control.

SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS AND PARTICIPATIONS

13.1 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of Borrowers, Agent, Secured Parties, and their respective successors and permitted assigns, except that (i) no Borrower shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (ii) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Term Loans as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

13.2 Participations.

13.2.1 Permitted Participants; Effect. Subject to **Section 13.2.3**, any Lender may sell to a financial institution ("Participant") a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Term Loans for all purposes, all amounts payable by Borrowers shall be determined as if it had not sold such participating interests, and Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall be entitled to the benefits of **Section 4.9** if such Participant has complied with the requirements of **Section 4.10** as if it were a Lender, it being understood that the documentation described in **Section 4.10** shall be delivered by the Participant to the Lender granting the participation) with respect to its participation in the Term Loan outstanding from time to time; provided, that such Participant agrees to be subject to the provisions of **Section 2.8** as if it were an assignee under **Section 13.3.1**; provided, further that no Participant shall be entitled to receive any greater amount pursuant to such Section than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred. Each Lender that sells a participating interest shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loan Documents or other obligations under this Agreement (the "Participant Register"); provided, however, that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such commitment, loan letter of credit or other obligation is in "registered form" under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

13.2.2 Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of any Loan Document other than that which (i) forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Term Loans in which such Participant has an interest, (ii) postpones the Maturity Date or any date fixed for any regularly scheduled payment of principal, interest or fees on the Term Loans, or (iii) releases any Borrower, Obligor or substantially all of the Collateral.

13.2.3 Benefit of Set-Off. Borrowers agree that each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.

13.3 Assignments.

13.3.1 Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (i) each assignment (other than an assignment to a Lender or an Affiliate of a Lender) is in a minimum principal amount of \$5,000,000 (or, if less, the entire amount of such Lender's portion of the Term Loans) the parties to each such assignment shall execute and deliver to EB an Assignment and Acceptance. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank; provided, however, that no such pledge or assignment shall release such Lender from its obligations hereunder or substitute the pledge or assignee for such Lender as a party hereto. Notwithstanding anything in the Loan Documents to the contrary, (i) no Lender nor any of its Affiliates shall be required to execute or deliver an Assignment and Acceptance in connection with any transaction involving such Lender and any of its Affiliates, or the lenders or funding or financing sources of such Lender or any of its Affiliates, (ii) subject to the provisions at the end of this paragraph, no lender to, funding or financing source of such Lender or any of its Affiliates shall be considered a Transferee, and (iii) there shall be no limitation or restriction on (A) the ability of such Lender or any of its Affiliates to assign or otherwise transfer any Loan Document, or any commitment or obligation thereunder, to any such Affiliate or lender or funding or financing source or (B) any such lender's or funding or financing source's ability, or the ability of any agent in respect thereof, to assign or otherwise transfer any Loan Document, or any commitment or obligation thereunder; provided that such Lender shall continue to be liable as a "Lender" under the Loan Documents unless such Affiliate, lender, funding or financing source or assignee, as the case may be, executes and delivers an Assignment and Acceptance and thereby becomes a "Lender" in accordance with the terms of this Agreement. The Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and address of the Lenders, and the respective principal amounts (and stated interest on) owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a

Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this **Section 13.3.1**.

13.3.2 Effect; Effective Date. Upon delivery to Agent of an assignment notice in the form of **Exhibit D** and a processing fee of \$3,500 (unless otherwise agreed by Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this **Section 13.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new Notes, as applicable. The transferee Lender shall comply with **Section 4.10** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3 Dissemination of Information. Each Borrower authorizes each Lender and Agent to disclose to any Participant, any Eligible Assignee or any other Person acquiring an interest in the Loan Documents by operation of law (each a “Transferee”), and any prospective Transferee, any and all information in Agent’s or such Lender’s possession concerning such Borrower, its Subsidiaries or the Collateral, subject to appropriate confidentiality undertakings on the part of such Transferee.

13.3.4 Certain Assignees. No assignment or participation may be made to a Borrower, Affiliate of a Borrower or a natural person.

SECTION 14. MISCELLANEOUS

14.1 Power of Attorney

Each Borrower hereby irrevocably designates, makes, constitutes and appoints Agent (and all Persons designated by Agent) as such Borrower’s true and lawful attorney (and agent-in-fact) and Agent, or Agent’s designee, may, without notice to such Borrower and in either such Borrower’s or Agent’s name, but at the cost and expense of Borrowers:

14.1.1 At such time or times as Agent or said designee, in its sole discretion, may determine, endorse Borrower’s name on any Payment Item or proceeds of the Collateral which come into the possession of Agent or under Agent’s control.

14.1.2 At any time that an Event of Default exists: (i) demand payment of the Accounts from the Account Debtors, enforce payment of the Accounts by legal proceedings or otherwise, and generally exercise all of a Borrower’s rights and remedies with respect to the collection of the Accounts; (ii) settle, adjust, compromise, discharge or release any of the Accounts or other Collateral or any legal proceedings brought to collect any of the Accounts or other Collateral; (iii) sell or assign any of the Accounts and other Collateral upon such terms, for such amounts and at such time or times as Agent deems advisable; (iv) take control, in any manner, of any item of payment or proceeds relating to any Collateral; (v) prepare, file and sign

Borrower's name to a proof of claim in bankruptcy or similar document against any Account Debtor or to any notice of Lien, assignment or satisfaction of Lien or similar document in connection with any of the Collateral; (vi) receive, open and dispose of all mail addressed to such Borrower and to notify postal authorities to change the address for delivery thereof to such address as Agent may designate; (vii) endorse the name of such Borrower upon any of the items of payment or proceeds relating to any Collateral and deposit the same to the account of Agent on account of the Obligations; (viii) endorse the name of such Borrower upon any chattel paper, document, instrument, invoice, freight bill, bill of lading or similar document or agreement relating to any Accounts or Inventory of any Obligor and any other Collateral; (ix) use such Borrower's stationery and sign the name of such Borrower to verifications of the Accounts and notices thereof to Account Debtors; (x) use the information recorded on or contained in any data processing equipment and computer hardware and software relating to the Accounts, Inventory, Equipment or any other Collateral; (xi) make and adjust claims under policies of insurance; (xii) sign the name of such Borrower on any proof of claim in bankruptcy against Account Debtors and on notices of Liens, claims of mechanic's Liens or assignments or releases of mechanic's Liens securing any Accounts; (xiii) take all action as may be necessary to obtain the payment of any letter of credit or banker's acceptance of which such Borrower is a beneficiary; and (xiv) do all other acts and things necessary, in Agent's determination, to fulfill such Borrower's obligations under this Agreement.

14.2 General Indemnity.

Each Borrower hereby agrees to indemnify and defend the Indemnitees and to hold the Indemnitees harmless from and against any Claim ever suffered or incurred by any of the Indemnitees arising out of or related to this Agreement or any of the other Loan Documents, the performance by Agent or Lenders of their duties or the exercise of any of their rights or remedies under this Agreement or any of the other Loan Documents, or as a result of such Borrower's failure to observe, perform or discharge any of such Borrower's duties hereunder. Each Borrower shall also indemnify and defend the Indemnitees against and save the Indemnitees harmless from all Claims of any Person arising out of, related to, or with respect to any transactions entered into pursuant to this Agreement or Agent's Lien upon the Collateral. Without limiting the generality of the foregoing, this indemnity shall extend to any Claims asserted against or incurred by any of the Indemnitees by any Person under any Environmental Laws or similar laws by reason of such Borrower's or any other Person's failure to comply with, or liability pursuant to, Environmental Law, or by reason of the release of or exposure of any Person to any Hazardous Material at any Real Estate currently or formerly owned, leased or operated by any Borrower. Additionally, if any Taxes (excluding Taxes imposed upon or measured solely by the net income of Agent and Lenders, but including any intangibles tax, stamp tax, recording tax or franchise tax) shall be payable by Agent or any Obligor on account of the execution or delivery of this Agreement, or the execution, delivery, issuance or recording of any of the other Loan Documents, or the creation or repayment of any of the Obligations hereunder, by reason of any Applicable Law now or hereafter in effect, Borrowers will pay (or will promptly reimburse Agent and Lenders for the payment of) all such Taxes, including any interest and penalties thereon, and will indemnify and hold Indemnitees harmless from and against all liability in connection therewith. The foregoing indemnities shall not apply to Claims incurred by any of the Indemnitees to the extent incurred as a direct result of their own gross

negligence or willful misconduct or that arise out of any disputes arising solely out of the relationship between Agent and any Lender.

Each Indemnitee will promptly notify Borrowers of any investigation, litigation or proceeding asserted or threatened in writing or instituted against it that may give rise to a claim under **Section 14.2**; provided, however, that the failure to so notify Borrowers shall in no way impair Borrowers' obligations under this **Section 14.2**. Borrowers, at the request of any Indemnitee, shall have the obligation to defend such Indemnitee against any such investigation, litigation or proceeding and shall promptly do so with representation by legal counsel reasonably satisfactory to such Indemnitee, and the Indemnitee shall use its reasonable efforts to cooperate in such defense. In all events, such Indemnitee shall have the right to have legal counsel of its choice participate in such defense; provided, however, that if Borrowers are defending such Indemnitee at such Indemnitee's request, the legal fees associated with Indemnitee's counsel participating in such defense, if any, shall be paid by such Indemnitee. If such obligation to defend is not requested by an Indemnitee, Borrowers' may participate in the defense thereof and any settlement negotiations, at Borrowers' expense, with legal counsel of Borrowers' choice (which counsel shall be reasonably satisfactory to such Indemnitee). No action taken by legal counsel chosen by such Indemnitee in defending against any such investigation, litigation or proceeding, shall vitiate or in any way impair Borrowers' obligation and duty hereunder to indemnify and hold harmless such Indemnitee.

14.3 Survival of All Indemnities.

Notwithstanding anything to the contrary in this Agreement or any of the other Loan Documents, the obligation of each Borrower and each Lender with respect to each indemnity given by it in this Agreement, whether given by a Borrower to Agent Indemnitees or Lender Indemnitees, or by any Lender to any Agent Indemnitees shall survive the Full Payment of all Obligations.

14.4 Modification of Agreement.

Subject to **Section 12.9** hereof, no term or provision of this Agreement may be modified, altered, amended or waived, except by an agreement in writing signed by Borrowers, Agent and Lenders; provided, however, that no consent, written or otherwise, of Borrowers shall be necessary or required in connection with any amendment of any of the provisions of **Sections 4.5** or **12** so long as such amendment imposes no additional obligations on Borrowers, or any other provision of this Agreement that affects only the rights, duties and responsibilities of Lenders and Agent as among themselves so long as no such amendment imposes any additional obligations on Borrowers. Any modification, amendment or waiver that Prospect Capital Corporation is a required signatory thereto, whether in its capacity as an Agent or a Lender, must be signed by either John F. Barry III as Chief Executive Officer or M. Grier Eliasek as Chief Operating Officer, or the successor of either or such other person notified to the Borrowers and the Agent for such purpose.

14.5 Severability.

All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement. Should any part of this Agreement be held invalid or unenforceable in any jurisdiction, the invalid or unenforceable portion or portions shall be removed (and no more) only in that jurisdiction, and the remainder shall be enforced as fully as possible (removing the minimum amount possible) in that jurisdiction.

14.6 Cumulative Effect; Conflict of Terms.

The provisions of the Other Agreements and the Security Documents are hereby made cumulative with the provisions of this Agreement. Without limiting the generality of the foregoing, the parties acknowledge that this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters and that such limitations, tests and measures are cumulative and each must be performed, except as may be expressly stated to the contrary in this Agreement. Except as otherwise provided in any of the other Loan Documents by specific reference to the applicable provision of this Agreement, if any provision contained in this Agreement is in direct conflict with, or inconsistent with, any provision in any of the other Loan Documents, the provision contained in this Agreement shall govern and control.

14.7 Execution in Counterparts.

This Agreement and any amendments hereto may be executed in any number of counterparts, including facsimiles, and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

14.8 Consent.

Whenever Agent's or Lenders' consent is required to be obtained under this Agreement or any of the other Loan Documents as a condition to any action, inaction, condition or event, Agent and each Lender shall be authorized to give or withhold its consent in its sole and absolute discretion and to condition its consent upon the giving of additional collateral security for the Obligations, the payment of money or any other matter.

14.9 Notices.

All notices, requests and demands to or upon a party hereto shall be in writing and shall be sent either by hand, by overnight courier service, by certified or registered mail, by telefacsimile or by email (in portable document format ("pdf") or tagged image file format ("TIFF")), and shall be deemed to have been validly served, given or delivered (i) in the case of notices and other communications delivered by hand or overnight courier service, upon actual receipt thereof, (ii) in the case of notices and other communications delivered by certified or registered mail, upon the earlier of actual delivery and the third Business Day after the date deposited in the U.S. mail with postage prepaid and properly addressed, provided, that no notice or communication to Agent or to Prospect in its capacity as a Lender shall be effective until actually received by the Administrative Agent or Prospect, as applicable, (iii) in the case of

notices and other communications delivered by telefacsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the telefacsimile was sent indicating that the telefacsimile was sent in its entirety to the recipient's telefacsimile number and (iv) in the case of notices and other communications delivered by email, upon receipt by the sender of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, a return email or other written acknowledgement), provided, that no notice or communication to the Agent or to Prospect in its capacity as a Lender shall be effective until receipt by the sender of written confirmation of receipt affirmatively initiated by the Agent or Prospect, as applicable, and further provided, in each case, that if a notice or other communication would be deemed to have been given in accordance with the foregoing at any time other than during the recipient's normal business hours on a Business Day for such recipient, such notice or other communication shall be deemed given on the next succeeding Business Day for such recipient, and provided, further, that no notice to Prospect shall be effective until delivered by at least two, not one, of the methods described in clauses (i) through (iv) above, in each case addressed to the noticed party at the address shown for such party on the signature page hereof or, in the case of a Person who becomes a Lender after the date hereof, at the address shown on the Assignment and Acceptance by which such Person became a Lender. Notwithstanding the foregoing, no notice to or upon any Borrower pursuant to **Section 11.1.4** shall be effective until such notice is actually delivered to such Borrower at its address for notices. Any written notice, request or demand that is not sent in conformity with the provisions hereof shall nevertheless be effective on the date that such notice, request or demand is actually received by the individual to whose attention at the noticed party such notice, request or demand is required to be sent. Agent and Lenders make no assurances as to the privacy and security of electronic communications. Voice mail may not be used as effective notice under the Loan Documents. Agent and Lenders may rely upon any notices purportedly given by or on behalf of any Borrower even if such notices were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any telephonic communication purportedly given by or on behalf of a Borrower. Each Borrower and each Lender acknowledges and agrees that the use of electronic transmission in general, and email in particular, is not necessarily secure and that there are risks associated with the use thereof, including risks of interception, disclosure and abuse, and each indicates it assumes and accepts such risks by hereby authorizing the use of electronic transmission. Any party hereto may change its address, facsimile number or email address for notices and other communications hereunder by notice to all of the other parties hereto in accordance with the foregoing.

14.10 Performance of Borrowers' Obligations.

If a Borrower shall fail to discharge any covenant, duty or obligation hereunder or under any of the other Loan Documents, Agent may, in its sole discretion at any time or from time to time, for such Borrower's account and at Borrowers' expense, pay any amount or do any act required of a Borrower hereunder or under any of the Loan Documents or otherwise lawfully requested by Agent to enforce any of the Loan Documents or Obligations, preserve, protect, insure or maintain any of the Collateral, or preserve, defend, protect or maintain the validity or priority of Agent's Liens in any of the Collateral, including the payment of any judgment against

a Borrower, any insurance premium, any warehouse charge, any finishing or processing charge, any landlord claim, any other Lien upon or with respect to any of the Collateral. All payments that Agent may make under this Section and all out-of-pocket costs and expenses (including Extraordinary Expenses) that Agent pays or incurs in connection with any action taken by it hereunder shall be reimbursed to Agent by Borrowers **on demand**, with interest from the date such payment is made or such costs or expenses are incurred until paid in full at the Default Rate. Any payment made or other action taken by Agent under this Section shall be without prejudice to any right to assert, and without waiver of, an Event of Default hereunder and to proceed thereafter as provided herein or in any of the other Loan Documents.

14.11 Credit Inquiries.

Each Borrower hereby authorizes and permits Agent and Lenders (but Agent and Lenders shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning such Borrower or any of its Subsidiaries.

14.12 Time of Essence.

Time is of the essence with respect to this Agreement, the Other Agreements, the Security Documents and all Obligations.

14.13 Indulgences Not Waivers.

Agent's or any Lender's failure at any time or times hereafter, to require strict performance by each Borrower of any provision of this Agreement shall not waive, affect or diminish any right of Agent or any Lender thereafter to demand strict compliance and performance therewith. A waiver or consent, express or implied, of or to any breach or default by any party in the performance by that party of its obligations with respect to the agreement is not a waiver or consent of or to any other breach or default in the performance by that party of the same or any other obligations of that party.

14.14 Entire Agreement; Appendix A, Exhibits and Schedules.

This Agreement and the other Loan Documents, together with all other instruments, agreements and certificates executed by the parties in connection therewith or with reference thereto, embody the entire understanding and agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings and inducements, whether express or implied, oral or written. Appendix A, each of the Exhibits and each of the Schedules attached hereto are incorporated into this Agreement and by this reference made a part hereof.

14.15 Interpretation.

No provision of this Agreement or any of the other Loan Documents shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having, or being deemed to have, structured, drafted or dictated such provision.

14.16 Obligations of Lenders Several.

The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations of any other Lender. Nothing contained in this Agreement and no action taken by Lenders pursuant hereto shall be deemed to constitute Lenders to be a partnership, association, joint venture or any other kind of entity, nor to constitute control of any Borrower. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purpose.

14.17 Advertising and Publicity.

With the prior consent of Borrowers (which shall not be unreasonably withheld or delayed), Agent, on behalf of Lenders, may issue and disseminate to the public (by advertisement or otherwise) information describing the credit accommodations made available by Lenders pursuant to this Agreement, including the name and address of Borrowers, the amount and security for the credit accommodations and the general nature of Borrowers' business; provided, however, that detail regarding terms (such as interest rate) may be provided only to industry publications, such as the "LPC Gold Sheets."

14.18 Confidentiality.

Agent and Lenders each agrees to exercise reasonable efforts (and, in any event, with at least the same degree of care as it ordinarily exercises with respect to confidential information of its other customers) to keep any confidential information that is delivered or made available by Borrowers to it and that is marked confidential, including information made available to Agent or any Lender in connection with a visit or investigation by any Person contemplated in **Section 9.1.1** hereof, confidential from any Person other than their respective Affiliates, general and limited partners, investors and individuals employed or retained by Agent or such Lender who are or are expected to become engaged in evaluating, approving, structuring, administering or otherwise giving professional advice with respect to the Term Loans or Collateral, including any of their respective legal counsel, auditors or other professional advisors; provided, however, that nothing herein shall prevent Agent or any Lender from disclosing such confidential information (i) to any party to this Agreement from time to time or any Participant, (ii) pursuant the order of any court or administrative agency, (iii) upon the request or demand of any regulatory agency or self-regulatory authority purporting to have jurisdiction over it or its Affiliates, (iv) which has been publicly disclosed other than by an act or omission of Agent or any Lender except as permitted herein or which becomes available to Agent or any Lender on a non-confidential basis from a source other than Obligors, (v) to the extent reasonably required in connection with any litigation (with respect to any of the Loan Documents or any of the transactions contemplated thereby) to which Agent, any Lender or their respective Affiliates may be a party (and, to the extent reasonably practicable, prior notice of such required disclosure shall be provided to Borrowers), (vi) in connection with any action or proceeding, or other exercise of rights or remedies, relating to any Loan Documents or Obligations, (vii) to any actual or proposed Participant, Assignee, counterparty or advisors to any Transferee of all or part of a Lender's rights hereunder so long as such Transferee has agreed in writing to be bound by the provisions of this Section, (viii) to the National Association of Insurance Commissioners or any similar

organization or to any nationally recognized rating agency that requires access to information about a Lender's portfolio in connection with ratings issued with respect to such Lender, (ix) to the extent reasonably required by Applicable Law or (x) with the consent of Borrowers.

14.19 Patriot Act Notice.

Agent and Lenders hereby notify Borrowers that pursuant to the requirements of the Patriot Act, Agent and Lenders are required to obtain, verify and record information that identifies each Borrower, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act. Agent and Lenders will also require information regarding each personal guarantor, if any, and may require information regarding Borrowers' management and owners, such as legal name, address, social security number and date of birth.

14.20 Governing Law; Consent to Forum.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that if any of the Collateral shall be located in any jurisdiction other than New York, the laws of such jurisdiction shall govern the method, manner and procedure for foreclosure of Agent's Lien upon such Collateral and the enforcement of Agent's other remedies in respect of such Collateral to the extent that the laws of such jurisdiction are different from or inconsistent with the laws of the State of New York. As part of the consideration for new value received, and regardless of any present or future domicile or principal place of business of Borrowers, any Lender or Agent, each Borrower hereby consents and agrees that the state courts for the State of New York, or, at Agent's option, the United States District Court for the Southern District of New York, shall have jurisdiction to hear and determine any claims or disputes among Borrowers, Agent and Lenders pertaining to this Agreement or to any matter arising out of or related to this Agreement. Each Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such Court, and each Borrower hereby waives any objection that such Borrower may have based upon lack of personal jurisdiction, improper venue or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such Court. Each Borrower hereby waives personal service of the summons, complaint and other process issued in any such action or suit and agrees that service of such summons, complaint and other process may be made by certified mail addressed to such Borrower at the address set forth in this Agreement and that service so made shall be deemed completed upon the earlier of such Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid. Nothing in this Agreement shall be deemed or operate to affect the right of Agent to serve legal process in any other manner permitted by law, or to preclude the enforcement by Agent of any judgment or order obtained in such forum or the taking of any action under this Agreement to enforce same in any other appropriate forum or jurisdiction.

14.21 Waivers by Borrowers.

To the fullest extent permitted by Applicable Law, each Borrower waives (i) the right to trial by jury (which Agent and each Lender hereby also waives) in any action, suit, proceeding or counterclaim of any kind arising out of or related to any of the Loan Documents, the Obligations or the Collateral; (ii) presentment, demand and protest and notice of presentment, protest, default, non payment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Agent on which such Borrower may in any way be liable and hereby ratifies and confirms whatever Agent may do in this regard; (iii) notice prior to taking possession or control of the Collateral or any bond or security which might be required by any court prior to allowing Agent to exercise any of Agent's remedies; (iv) the benefit of all valuation, appraisal and exemption laws; (v) any claim against Agent or any Lender, on any theory of liability, for special, indirect, consequential, or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any of the Loan Documents, any transaction thereunder or the use of the proceeds of any Term Loans; and (vi) notice of acceptance hereof. Each Borrower acknowledges that the foregoing waivers are a material inducement to Agent's and Lender's entering into this Agreement and that Agent and Lenders are relying upon the foregoing waivers in its future dealings with Borrowers. Each Borrower warrants and represents that it has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the Court.

14.22 Binding Effect; Further Assurances.

This Agreement shall become effective at such time, on or after the Closing Date, that the conditions precedent set forth in **Section 10.1** have been satisfied and when it shall have been executed by Borrowers and Agent, and Agent shall receive copies hereof (telecopied or otherwise) which, when taken together, bear the signatures of each Lender and thereafter this Agreement shall be binding upon and inure to the benefit of each Borrower, each Lender and Agent, together with their respective successors and assigns. Each Borrower agrees, upon the request of Agent and/or the Required Lenders, to promptly take such actions, as reasonably requested, as are appropriate to carry out the intent of this Agreement and the other Loan Documents, including, but not limited to, such actions as are reasonably necessary to ensure that Agent, for its own benefit and the ratable benefit of Lenders, have a perfected security interest in all collateral securing the Obligations, subject to no Liens other than Permitted Liens.

14.23 Obligations Subject to Subordination Agreement.

This instrument and the rights and Obligations evidenced hereby are subordinate, in the manner and to the extent set forth in that certain Intercreditor and Subordination Agreement (the "Subordination Agreement") dated as of September 28, 2012 between the Agent, as second priority agent for the Lenders and Bank of America, N.A., as First Priority Agent for the First Priority Lenders, to the indebtedness (including interest) owed by Ellett Brothers, LLC ("Ellett"), the other borrowers from time to time party thereto (together with Ellett, individually a "Borrower" and collectively the "Borrowers"), pursuant to that certain Third Amended and Restated Loan and Security Agreement, dated as of September 28, 2012, by and among the

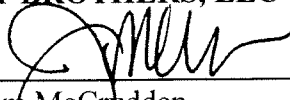
Borrowers, the lenders from time to time party thereto and Bank of America, N.A., as agent, and the indebtedness owed by any guarantors under guaranties with respect thereto, as such agreements have been and hereafter may be amended, restated, supplemented, extended, renewed, refinanced, replaced or otherwise modified and to any indebtedness refinancing the indebtedness under such agreements as contemplated by the Subordination Agreement; and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Subordination Agreement.

*[Remainder of the page intentionally left blank;
signatures commence on the following page]*

IN WITNESS WHEREOF, this Agreement has been duly executed on the day and year specified at the beginning of this Agreement.

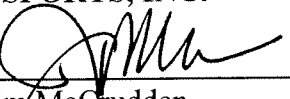
BORROWERS:

ELLETT BROTHERS, LLC

By: 
Name: Jim McCrudden
Title: Vice President - Finance, Secretary and
Chief Financial Officer

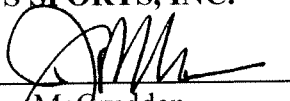
Address: Ellett Brothers
267 Columbia Avenue
Chapin, SC 29036
Attention: Jim McCrudden
Telecopy No.: 803-932-1500

EVANS SPORTS, INC.

By: 
Name: Jim McCrudden
Title: Vice President - Finance and Secretary

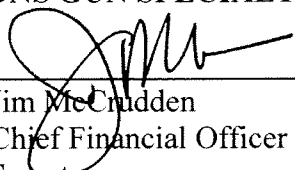
Address: Ellett Brothers
267 Columbia Avenue
Chapin, SC 29036
Attention: Jim McCrudden
Telecopy No.: 803-932-1500

JERRY'S SPORTS, INC.

By: 
Name: Jim McCrudden
Title: Chief Financial Officer, Chief Operating
Officer and Assistant Secretary

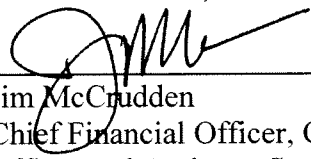
Address: Ellett Brothers
267 Columbia Avenue
Chapin, SC 29036
Attention: Jim McCrudden
Telecopy No.: 803-932-1500

SIMMONS GUN SPECIALTIES, INC.

By: 
Name: Jim McCrudden
Title: Chief Financial Officer and Assistant Secretary

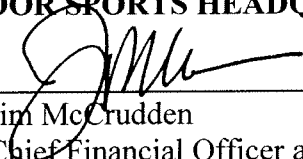
Address: Ellett Brothers
267 Columbia Avenue
Chapin, SC 29036
Attention: Jim McCrudden
Telecopy No.: 803-932-1500

BONITZ BROTHERS, INC.

By: 
Name: Jim McCrudden
Title: Chief Financial Officer, Chief Operating Officer and Assistant Secretary

Address: Ellett Brothers
267 Columbia Avenue
Chapin, SC 29036
Attention: Jim McCrudden
Telecopy No.: 803-932-1500

OUTDOOR SPORTS HEADQUARTERS, INC.

By: 
Name: Jim McCrudden
Title: Chief Financial Officer and Assistant Secretary

Address: Ellett Brothers
267 Columbia Avenue
Chapin, SC 29036
Attention: Jim McCrudden
Telecopy No.: 803-932-1500

AGENT:

PROSPECT CAPITAL CORPORATION

By: *M. David Elisek*
Name: *M. DAVID ELISEK*
Title: *PRESIDENT*

LENDER:

PROSPECT CAPITAL CORPORATION

By: 
Name: M. Grier Eliasek
Title: President

Address for Notice:

Prospect Capital Corporation
10 East 40th Street, 44th Floor
New York, New York 10016
Attention: General Counsel and Geoffrey Chang
Facsimile No.: 212-448-9652
Email: fax@prospectstreet.com
pl@prospectstreet.com
gchang@prospectstreet.com
grier@prospectstreet.com
jbarry@prospectstreet.com

LENDER:

SUMMIT PARTNERS CREDIT FUND, L.P.

By: Summit Partners Credit GP, L.P.

Its: General Partner

By: Summit Partners Credit GP, LLC

Its: General Partner

By: 

Name: Martin Mannion

Title: Authorized Signatory

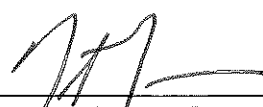
**SUMMIT PARTNERS CREDIT FUND A-1,
L.P.**

By: Summit Partners Credit GP A-1, L.P.

Its: General Partner

By: Summit Partners Credit GP A-1, LLC

Its: General Partner

By: 

Name: Martin Mannion

Title: Authorized Signatory

Address for Notice:

c/o Summit Partners, L.P.

222 Berkeley Street, 18th Floor

Boston, MA 02116

Fax: 617.498.4901

Attn: Todd Hearle

LENDER:

SUMMIT INVESTORS I, LLC

By: Summit Investors Management, LLC
Its: Manager

By: Summit Partners, L.P.
Its: Manager

By: Summit Master Company, LLC
Its: General Partner

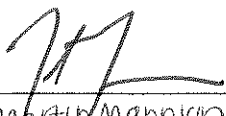
By: 
Name: Martin Mannion
Title: Authorized Signatory

SUMMIT INVESTORS I (UK), LP

By: Summit Investors Management, LLC
Its: Manager

By: Summit Partners, L.P.
Its: Manager

By: Summit Master Company, LLC
Its: General Partner

By: 
Name: Martin Mannion
Title: Authorized Signatory

Address for Notice:
c/o Summit Partners, L.P.
222 Berkeley Street, 18th Floor
Boston, MA 02116
Fax: 617.498.4901
Attn: Todd Hearle

APPENDIX A

GENERAL DEFINITIONS

When used in the Second Lien Loan and Security Agreement dated September 28, 2012 (as at any time amended, the “Agreement”), by and among **ELLETT BROTHERS, LLC** (“EB”), a South Carolina limited liability company, **EVANS SPORTS, INC.** (“Evans”), a South Carolina corporation, **JERRY’S SPORTS, INC.** (“Jerry”), a Delaware corporation, **SIMMONS GUN SPECIALTIES, INC.** (“Simmons”), a Delaware corporation, **BONITZ BROTHERS, INC.** (“Bonitz”), a Delaware corporation, **OUTDOOR SPORTS HEADQUARTERS, INC.** (“Outdoor”), a Delaware corporation, each with its chief executive office and principal place of business at 267 Columbia Avenue, Chapin, South Carolina (EB, Evans, Jerry, Simmons, Bonitz and Outdoor being referred to collectively as “Borrowers,” and individually as a “Borrower”), each financial institution listed on the signature pages attached thereto and its successors and assigns, which become “Lenders” as provided therein (each such financial institution and its successors and assigns referred to collectively herein as “Lenders” and individually as “Lender”), and **PROSPECT CAPITAL CORPORATION** (“Agent”), in its capacity as collateral and administrative agent for itself and Lenders, the following terms shall have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Account - shall have the meaning ascribed to “account” in the UCC and shall include any and all rights of a Borrower to payment for goods sold or leased or for services rendered that are not evidenced by an Instrument or Chattel Paper, whether or not they have been earned by performance.

Account Debtor - any Person who is or may become obligated under or on account of an Account.

Adjusted EBITDA -- for any fiscal period of an Obligor, an amount equal to the sum for such fiscal period of (i) Adjusted Net Earnings, plus (ii) provision for taxes based on income for such period, to the extent deducted in the calculation of Adjusted Net Earnings, plus (iii) Interest Expense for such period, to the extent deducted in the calculation of Adjusted Net Earnings, plus (iv) depreciation and amortization expense for such period, to the extent deducted in the calculation of Adjusted Net Earnings, plus (v) extraordinary and non-recurring non-cash losses for such period, to the extent deducted in the calculation of Adjusted Net Earnings, plus (vi) non-recurring fees, expenses or charges (whether or not paid in cash), including severance expenses and related legal fees, and directors’ fees and non-recurring consulting fees in an aggregate amount equal to (x) up to \$3,000,000 in any trailing twelve Fiscal Month period, plus (y) amounts in excess of \$3,000,000 during such period subject to the consent of the Required Lenders (such consent not to be unreasonably withheld); plus (vii) management fees and out-of-pocket expenses pursuant to the Expense Reimbursement Agreement; plus (viii) fees and expenses incurred in connection with (A) the negotiation, execution and delivery of the Loan Documents and the Second Priority Loan Documents, including amendments and other modifications thereof from time to time, and (B) the consummation of the Transactions; plus

(ix) proceeds of business interruption insurance received in cash during such period and expenses incurred in connection with extraordinary casualty events to the extent such expenses are reimbursed in cash by insurance during such period; minus (x) extraordinary and non-recurring non-cash gains for such period, to the extent added in the calculation of Adjusted Net Earnings.

Adjusted Net Earnings - with respect to any period, means the net earnings (or loss) for such period of Borrowers, all as reflected on the financial statement of Borrowers supplied to Lender pursuant to **Section 9.1.3** hereof, but excluding: (i) any gain (or loss) arising from any write-up (or write-down) of assets during such period; (ii) earnings of any Subsidiary accrued prior to the date it became a Subsidiary; (iii) earnings of any Person, substantially all the assets of which have been acquired in any manner by a Borrower, realized by such Person prior to the date of such acquisition; (iv) net earnings of any entity (other than a Subsidiary of a Borrower) in which a Borrower has an ownership interest unless such net earnings have actually been received by a Borrower in the form of cash Distributions; (v) any portion of the net earnings of any Subsidiary which for any reason is unavailable for payment of Distributions to a Borrower; (vi) the earnings of any Person to which any assets of Borrower shall have been sold, transferred or disposed of, or into which a Borrower shall have merged, or been a party to any consolidation or other form of reorganization, prior to the date of such transaction; and (vii) any gain (or loss) arising from extraordinary or non-recurring items, all as determined in accordance with GAAP.

Affiliate - with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “Control” means the possession, directly or indirectly, of the power to vote ten percent (10%) or more of the securities having ordinary voting power for the election of the directors or managers (or similar governing body) or to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have correlative meanings.

Agent – as defined in the introductory paragraph.

Agent Indemnitees - Agent in its capacity as collateral and administrative agent for Lenders under the Loan Documents and all of Agent’s present and future officers, directors, agents and attorneys.

Agent Professionals - attorneys, accountants, appraisers, consultants, business valuation experts, environmental engineers or consultants, turnaround specialists and other professionals or experts retained by Agent.

Agreement - the Loan and Security Agreement referred to in the first sentence of this Appendix A, all Exhibits and Schedules thereto and this Appendix A.

Allocable Amount – as defined in **Section 4.11.3**.

Anti-Terrorism Laws - any laws relating to terrorism or money laundering, including the Patriot Act.

Applicable Law - all laws, rules and regulations applicable to the Person, conduct, transaction, covenant, Loan Document or Material Contract in question, including all applicable common law and equitable principles; all provisions of all applicable state, federal and foreign constitutions, statutes, rules, regulations and orders of governmental bodies; and all orders, judgments and decrees of all courts and arbitrators, including, without limitation, the Federal Gun Control Act, the National Firearms Act, the Arms Export Control Act, and the implementing regulations of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Approved Fund - any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in its ordinary course of activities, and is administered or managed by a Lender, an entity that administers or manages a Lender, or an Affiliate of either.

Assignment and Acceptance - an assignment and acceptance entered into by a Lender and an assignee of such Lender's Term Loans, in the form of **Exhibit C**.

Bank of America - Bank of America, N.A., a national banking association.

Bankruptcy Code - title 11 of the United States Code.

Board of Governors - the Board of Governors of the Federal Reserve System.

Bonitz - as defined in the introductory paragraph.

Borrowers - EB, Evans, Jerry, Simmons, Bonitz, Outdoor and each other Person that becomes a Borrower pursuant to **Section 9.1.12**.

Business Day - any day excluding Saturday, Sunday and any other day that is a legal holiday under the laws of the State of New York, the State of North Carolina, or is a day on which banking institutions located in such state are closed.

Business Interruption Insurance Assignment - the Collateral Assignment of Business Interruption Insurance to be executed by Borrowers on or after the Closing Date in favor of Agent, in form and substance satisfactory to Lender, as security for the payment of the Obligations.

Capital Expenditures - expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto which have a useful life of more than one year.

Capital Stock - (i) in the case of a corporation, capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (iii) in the case of a partnership, partnership interests (whether general or limited), (iv) in the case of a limited liability company, membership interests and (v) any other equity interest or equity participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

Capitalized Lease Obligation - any Debt represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Cash Collateral - cash or Cash Equivalents, and any interest earned thereon, that is deposited with Agent or First Priority Agent in accordance with this Agreement or the First Priority Loan Agreement, as applicable, for the Pro Rata benefit of Lenders as security for the Obligations.

Cash Equivalents - (i) marketable direct obligations issued or unconditionally guaranteed by the United States government and backed by the full faith and credit of the United States government having maturities of not more than 12 months from the date of acquisition; (ii) domestic certificates of deposit and time deposits having maturities of not more than 12 months from the date of acquisition, bankers' acceptances having maturities of not more than 12 months from the date of acquisition and overnight bank deposits, in each case issued by any commercial bank organized under the laws of the United States, any state thereof or the District of Columbia, which at the time of acquisition are rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and (unless issued by a Lender) not subject to offset rights in favor of such bank arising from any banking relationship with such bank; (iii) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clauses (i) and (ii) entered into with any financial institution meeting the qualifications specified in clause (ii) above; and (iv) commercial paper having at the time of investment therein or a contractual commitment to invest therein a rating of A-1 (or better) by S&P or P-1 (or better) by Moody's, and having a maturity within 9 months after the date of acquisition thereof.

Cash Management Services - any services provided from time to time by a Lender or any of its Affiliates to any Borrower or Subsidiary in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

CERCLA - the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. ' 9601 et seq. and its implementing regulations.

Change in Law - the occurrence, after the date hereof, of (i) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (iii) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, guidelines, requirements or directives (a) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (b) promulgated pursuant to Basel III by the Bank of International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control - the occurrence of any of the following events after the Closing Date: (i) Wellspring shall fail to own and control, directly or indirectly, or have control over, more than 50% of the Capital Stock of SportCo, or (ii) SportCo shall fail to own, directly or indirectly, or

have control over, all of the Capital Stock of Holdings, or (iii) Holdings shall fail to own, directly or indirectly, or have control over, all of the Capital Stock of Borrowers or (iv) during any period of up to 24 consecutive months, commencing after the Closing Date, individuals who at the beginning of such 24 month period were directors of EB (together with any new director whose election by EB's Board of Directors or whose nomination for election by EB's shareholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the directors of EB then in office.

Chattel Paper - shall have the meaning given to "chattel paper" in the UCC.

Claims - any and all claims, demands, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, awards, remedial response costs, expenses or disbursements of any kind or nature whatsoever (including reasonable attorneys', accountants', consultants' or paralegals' fees and expenses), whether arising under or in connection with the Loan Documents, any Applicable Law (including any Environmental Laws) or otherwise, that may now or hereafter be suffered or incurred by a Person and whether suffered or incurred in or as a result of any investigation, litigation, arbitration or other judicial or non-judicial proceeding or any appeals related thereto.

Closing Date - the date on which all of the conditions precedent in **Section 10** of the Agreement are satisfied and the Term Loans are made under the Agreement.

Closing Date Distribution - the one-time cash Distribution by Borrowers to Holdings (for further distribution to SportCo and Wellspring and the other shareholders of SportCo) on the Closing Date in an amount up to \$134,500,000, which Distribution shall be excluded from all calculations of the Consolidated Fixed Charge Coverage Ratio.

Code - the Internal Revenue Code of 1986.

Collateral - all of the Property and interests in Property described in **Section 6** of the Agreement; all Property described in any of the Security Documents as security for the payment or performance of any of the Obligations; and all other Property and interests in Property that now or hereafter secure (or are intended to secure) the payment and performance of any of the Obligations.

Commercial Tort Claim - shall have the meaning ascribed to "commercial tort claim" in the UCC.

Commitment Percentage - shall mean, for any Lender, the percentage identified as its Commitment Percentage on Schedule 2, as such percentage may be modified in connection with any assignment made in accordance with the provisions of **Section 13.3**.

Compliance Certificate - a Compliance Certificate to be provided by Borrowers to Agent in accordance with, and in the form annexed as **Exhibit B** to, the Agreement, and the supporting schedules to be annexed thereto.

Consolidated - the consolidation in accordance with GAAP of the accounts or other items as to which such term applies.

Consolidated Capital Expenditures – for any applicable period of computation, Capital Expenditures of the Obligors on a Consolidated basis other than Capital Expenditures that are financed with Money Borrowed if (i) such Money Borrowed does not consist of Revolver Loans (as defined in the First Priority Loan Agreement), and (ii) such Money Borrowed is secured solely by the assets that are being financed.

Consolidated Fixed Charge Coverage Ratio – the ratio, for any applicable period of computation, of (i) Adjusted EBITDA for such period minus cash income taxes and Distributions paid for such period minus Consolidated Capital Expenditures for such period to (ii) Fixed Charges for such period.

Consolidated Funded Debt - for any applicable period of computation, Funded Debt of the Obligors on a Consolidated basis.

Consolidated Interest Expense - for any applicable period of computation, the sum of (a) total interest expense of the Obligors for such period with respect to all outstanding Indebtedness of the Obligors, plus (b) all dividends (other than dividends payable solely in Capital Stock (other than Disqualified Capital Stock)) made on account of preferred Capital Stock of any Obligor for such period. For the avoidance of doubt, when calculating Consolidated Interest Expense, cash interest income earned in any period will not be net against Consolidated Interest Expense.

Consolidated Scheduled Debt Payments - for any applicable period of computation, the sum of all scheduled payments of principal of Consolidated Funded Debt for such period (including the principal component of payments due on capital leases for such period), whether paid under the First Priority Loan Documents or the Second Priority Loan Documents, and together with any applicable Prepayment Premiums.

Consolidated Senior Debt – for any applicable period of computation, the outstanding principal amount of all Consolidated Funded Debt of the Obligors minus the outstanding principal amount of the Subordinated Debt of the Obligors.

Consolidated Senior Leverage Ratio - the ratio, for any applicable period of computation, of (a) Consolidated Senior Debt to (b) Adjusted EBITDA for such period.

Consolidated Total Leverage Ratio - the ratio, for any applicable period of computation, of (a) Consolidated Funded Debt to (b) Adjusted EBITDA for such period.

Contingent Obligation - with respect to any Person, any obligation of such Person arising from any guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including (i) 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 the obligation of a primary obligor, (ii) the obligation to make take-or-pay or similar payments, if required,

regardless of nonperformance by any other party or parties to an agreement, (iii) any obligation of such Person, whether or not contingent, (A) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (B) to advance or supply funds (1) for the purchase or payment of any such primary obligations or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (C) to purchase Property, Securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (D) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term “Contingent Obligation” shall not include any product warranties extended in the Ordinary Course of Business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

Control or controlled by or under common control - possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of voting securities, by contract or otherwise, but not solely by being an officer or director of that Person); provided, however, that in the event any Person which beneficially owns, directly or indirectly, 30% or more (in number of votes) of the Equity Interest having ordinary Voting Power with respect to a corporation shall be conclusively presumed to control such corporation.

Cure Proceeds - as defined in **Section 9.3.3.**

Cure Right - as defined in **Section 9.3.3.**

Current Maturities of Funded Debt - all principal payments in respect of Funded Debt scheduled to be made in the twelve (12) month period following the date of determination.

Debt - as applied to a Person means, without duplication: (i) all items which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a balance sheet of such Person as of the date as of which Debt is to be determined, including Capitalized Lease Obligations; (ii) all Contingent Obligations of such Person; (iii) all letters of credit or letter of credit guaranties outstanding for the account of such Person and, without duplication, all reimbursement obligations in connection therewith; and (iv) in the case of Borrowers (without duplication), the Obligations. The Debt of a Person shall include any recourse Debt of any partnership or joint venture in which such Person is a general partner or joint venturer.

Default - an event or condition the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default.

Default Rate - on any date, a rate per annum that is equal to 2% in excess of the rate otherwise applicable to the Term Loans on such date.

Deposit Accounts - all of a Person's demand, time, savings, passbook, money market or other depository accounts, and all certificates of deposit, maintained by such Person with any bank, savings and loan association, credit union or other depository institution.

Deposit Account Assignment - the Collateral Assignment of Deposit Accounts to be executed by Borrowers on or before the Closing Date in favor of Agent for itself and the Pro Rata benefit of Lenders as security for the Obligations.

Disqualified Capital Stock - shall mean any Capital Stock of any Person issued after the date hereof which, by its terms or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable at the option of the holder, or upon the happening of any event other than a change of control, matures or is mandatorily redeemable pursuant to sinking fund obligation or otherwise, or is redeemable for cash, property or securities constituting Indebtedness at the option of the holder thereof, in whole or in part, or would require the mandatory payment of dividends (other than dividends payable in Capital Stock (other than Disqualified Capital Stock)) on or prior to the date that is twelve (12) months following the Maturity Date.

Disregarded Subsidiary - any Subsidiary of a Borrower with an aggregate value of total assets, as of the Closing Date, of less than \$50,000 and Willoughby & Taylor, LLC, a Delaware limited liability company.

Distribution - in respect of any entity, (i) any payment of dividends or other distributions on Equity Interests of the entity (except distributions in such Equity Interests) and (ii) any purchase, redemption or other acquisition or retirement for value of any Equity Interests of the entity or any Affiliate of the entity unless made contemporaneously from the Net Proceeds of the sale of Equity Interests.

Document - shall have the meaning given to "document" in the UCC.

Dollars and the sign \$ - lawful money of the United States of America.

Domestic Subsidiary - a Subsidiary of an Obligor (other than a Subsidiary that is a Borrower) that is incorporated under the laws of a state of the United States or the District of Columbia.

Dominion Account - a special account established by a Borrower at Bank of America or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes.

EB - as defined in the introductory paragraph.

Electronic Chattel Paper - shall have the meaning given to "electronic chattel paper" in the UCC.

Eligible Assignee - a Person that is (i) a Lender, U.S. based Affiliate of a Lender or Approved Fund; (ii) any other Person approved by EB (which approval shall not be unreasonably withheld, delayed or conditioned, and shall be deemed given if no objection is made within five

(5) Business Days after notice of the proposed assignment) and Agent; and (iii) during any Event of Default, any Person acceptable to Agent in its discretion.

Environmental Laws - all Applicable Laws (including all programs, permits and guidance promulgated by regulatory agencies), relating to public health (but excluding occupational safety and health, to the extent regulated by OSHA) or the protection or pollution of the environment, including CERCLA, the Resource Conservation and Recovery Act ([42 U.S.C. §§ 6991-6991j](#)) and the Clean Water Act ([33 U.S.C. §§ 1251 et seq.](#)).

Environmental Notice - a notice from any Governmental Authority or other Person of noncompliance with, investigation of a violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any Environmental Release, environmental pollution or hazardous materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

Environmental Release - a release as defined in CERCLA or under any applicable Environmental Laws.

Equipment - shall have the meaning given to “equipment” in the UCC and shall include all of a Borrower’s machinery, apparatus, equipment, fittings, furniture, fixtures, motor vehicles and other tangible personal Property (other than Inventory) of every kind and description, whether now owned or hereafter acquired by a Borrower and wherever located, and all parts, accessories and special tools therefor, all accessions thereto, and all substitutions and replacements thereof.

Equity Interest - the interest of (i) a shareholder in a corporation, (ii) a partner (whether general or limited) in a partnership (whether general, limited or limited liability), (iii) a member in a limited liability company, or (iv) any other Person having any other form of equity security or ownership interest.

Equity Issuance - shall mean the issuance by any Obligor to any Person that is not an Obligor of any Capital Stock, including any Capital Stock that is issued pursuant to the exercise of any option, warrant or other conversion (including a conversion of any debt securities to equity), or the receipt by any Obligor of a capital contribution from any Person that is not an Obligor; other than any issuance of Capital Stock by SportCo to its equity holders, or any receipt by an Obligor of a cash common equity contribution, in each case, solely to finance Capital Expenditures permitted hereunder; provided that the foregoing shall not be deemed to imply that any such issuance is permitted under this Agreement. The term “Equity Issuance” shall not include any issuance pursuant to the exercise of any option, warrant or other sale of Capital Stock of SportCo to members of the management of the Borrowers pursuant to an employment agreement, employee option plan, stock option plan or other employee benefits program.

ERISA - the Employee Retirement Income Security Act of 1974 and all rules and regulations from time to time promulgated thereunder.

ERISA Affiliate - any trade or business (whether or not incorporated) under common control with an Obligor within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

ERISA Event - (a) a Reportable Event with respect to a Pension Plan; (b) a failure to make any required contribution to a Plan in a timely fashion; (c) a failure to comply with all applicable requirements under the Pension Funding Rules or the application for or receipt of a waiver of the minimum funding standards under the Pension Funding Rules by any Obligor or ERISA Affiliate; (d) the creation of any Lien in favor of the PBGC or a Plan on the assets of any Obligor or ERISA Affiliate; (e) a withdrawal by any Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (f) a complete or partial withdrawal by any Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (g) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (h) the determination that any Pension Plan or Multiemployer Plan is considered an at risk plan or a plan in critical or endangered status under the Code, ERISA or the Pension Protection Act of 2006; (i) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (j) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or ERISA Affiliate.

Eurocurrency Liabilities - shall have the meaning ascribed thereto in Regulation D issued by the Board of Governors.

Event of Default - as defined in **Section 11** of the Agreement.

Excess Cash Flow - shall mean, with respect to any Fiscal Year of the Borrowers on a Consolidated basis, an amount equal to (a) Adjusted EBITDA, exclusive of any adjustments made pursuant to subsection (v) or (x) of the definition thereof, for such Fiscal Year; minus (b) any cash charges added back thereto pursuant to the definition thereof for such Fiscal Year; minus (c) the sum of (i) Consolidated Capital Expenditures made in cash during such Fiscal Year to the extent made not in violation of this Agreement, plus (ii) Consolidated Interest Expense paid in cash during such Fiscal Year, plus (iii) the amount of any Taxes paid in cash during such Fiscal Year, (iv) Consolidated Scheduled Debt Payments made in cash during such Fiscal Year to the extent made not in violation of this Agreement, plus (v) increases in working capital (excluding cash and Cash Equivalents) for such Fiscal Year plus (vi) at the Obligors' option an amount up to 100% of the voluntary prepayments of the Term Loans made pursuant to **Section 4.3.1 or 4.3.2** during such Fiscal Year plus (vii) the amount of any payments under the Expense Reimbursement Agreement paid in cash in accordance with **Section 9.2.4** during such Fiscal Year.

Excluded Account - as defined in **Section 6.2**.

Excluded Equity - any voting stock in excess of 65% of the voting stock of any Foreign Subsidiary to the extent that a pledge of more than 65% of the voting Equity Interests of such Foreign Subsidiary could result in material incremental income tax liability as a result of the application of Section 956 of the Code, taking into account actual or anticipated repatriation of funds, foreign tax credits and other relevant factors. For the purposes of this definition, "voting

stock” means, as to any issuer, the issued and outstanding shares of each class of capital stock or other ownership interests of such issuer entitled to vote (within the meaning of Treasury Regulations § 1.956-2(c)(2)).

Excluded Property - the collective reference to (i) all Excluded Equity, (ii) any permit, lease, license, contract, instrument or other agreement held by any Obligor that prohibits or requires the consent of any Person other than Borrowers and their Affiliates as a condition to the creation by such Obligor of a Lien thereon, or any permit, lease, license, contract, instrument or other agreement held by any Obligor to the extent that any requirement of law applicable thereto prohibits the creation of a Lien thereon, but only, in each case, to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other requirement of law and (iii) Equipment owned by any Obligor that is subject to a purchase money Lien or a capital lease if the contract or other agreement in which such Lien is granted (or in the documentation providing for such capital lease) prohibits or requires the consent of any Person other than Borrowers or their Affiliates as a condition to the creation of any other Lien on such Equipment; provided, however, “Excluded Property” shall not include any proceeds, substitutions or replacements of Excluded Property (unless such proceeds, substitutions or replacements would constitute Excluded Property).

Excluded Tax - with respect to Agent, any Lender or any other recipient of a payment to be made by or on account of any Obligation, (a) Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes imposed on it (in lieu of net income taxes), in each case, (i) by the jurisdiction (or any political subdivision thereof or therein) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or (ii) by any other jurisdiction as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document or sold or assigned an interest in any of its rights or obligations under the Loan Documents); (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which EB is located; (c) any backup withholding tax required by the Code to be withheld from amounts payable to a Lender that has failed to comply with **Section 4.10**; (d) in the case of a Foreign Lender, any United States withholding tax that is (i) required pursuant to laws in force at the time such Lender becomes a Lender (or designates a new Lending Office) hereunder, or (ii) attributable to such Lender’s failure or inability (other than as a result of a Change in Law) to comply with **Section 4.10**, except in the case of both (i) and (ii), to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from Borrowers with respect to such withholding tax, and (e) any U.S. federal withholding Taxes imposed pursuant to FATCA.

Expense Reimbursement Agreement – that certain Amended and Restated Expense Reimbursement Agreement, dated as of November 16, 2009, by and between SportCo and Wellspring Capital Management LLC.

Extraordinary Expenses - all costs, expenses, fees (including fees incurred to Agent Professionals) or advances that Agent or any Lender may suffer or incur, whether prior to or after the occurrence of an Event of Default, and whether prior to, after or during the pendency of an Insolvency Proceeding of an Obligor, on account of or in connection with (i) the audit, inspection, repossession, storage, repair, appraisal, insuring, completion of the manufacture of, preparing for sale, advertising for sale, selling, collecting or otherwise preserving or realizing upon any Collateral; (ii) the defense of Agent's Lien upon any Collateral or the priority thereof or any adverse claim with respect to the Term Loans, the Loan Documents or the Collateral asserted by any Obligor, any receiver or trustee for any Obligor or any creditor or representative of creditors of any Obligor; (iii) the settlement or satisfaction of any Liens upon any Collateral (whether or not such Liens are Permitted Liens); (iv) the collection or enforcement of any of the Obligations; (v) the negotiation, documentation, and closing of any restructuring or forbearance agreement with respect to the Loan Documents or Obligations; (vi) amounts advanced by Agent pursuant to **Section 7.1.3** of the Agreement; (vii) the enforcement of any of the provisions of any of the Loan Documents; or (viii) any payment under a guaranty, indemnity or other payment agreement provided by Agent or (with Agent's consent) any Lender, which is reimbursable to Agent or such Lender by Borrowers pursuant to **Section 2.4.2** of the Agreement. Such costs, expenses and advances may include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of a Borrower or independent contractors in liquidating any Collateral, travel expenses, all other fees and expenses payable or reimbursable by Borrowers or any other Obligor under any of the Loan Documents, and all other fees and expenses associated with the enforcement of rights or remedies under any of the Loan Documents, but excluding compensation paid to employees (including inside legal counsel who are employees) of Agent.

FATCA - Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471 (b) (1) of the Code.

Federal Funds Rate - the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on the applicable Business Day (or on the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day.

FEIN - with respect to any Person, the Federal Employer Identification Number of such Person.

First Priority Agent – has the meaning ascribed to “Senior Agent” in the Subordination Agreement.

First Priority Debt – has the meaning ascribed to “Senior Liabilities” in the Subordination Agreement, including any amendments or refinancings in whole or in part, thereof, in accordance with the terms of the Subordination Agreement.

First Priority Lenders - has the meaning ascribed to “Senior Creditors” in the Subordination Agreement.

First Priority Loan Agreement - has the meaning ascribed to “Senior Loan Agreement” in the Subordination Agreement.

First Priority Loan Documents - has the meaning ascribed to “Senior Loan Documents” in the Subordination Agreement.

Fiscal Month – each period of one month, commencing on the first day of a Fiscal Year.

Fiscal Year - the fiscal year of each Borrower and its Subsidiaries for accounting and tax purposes, which shall begin on January 1 of each calendar year and end on December 31 of each calendar year, and when preceded by the designation of a calendar year (e.g., 2007 Fiscal Year) means the fiscal year of such Person ended on December 31 of such designated calendar year.

Fixed Charges - for any period, the sum of Borrowers’ (i) Interest Expense during such period, plus (ii) on the date of determination, Current Maturities of Funded Debt.

FLSA - the Fair Labor Standards Act of 1938.

Foreign Lender – any Lender that is not a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States (or any jurisdiction thereof), or any estate or trust that is subject to federal income taxation regardless of the source of its income.

Foreign Subsidiary - a Subsidiary that is not a Domestic Subsidiary.

Full Payment – with respect to any Obligations, the full and indefeasible cash payment thereof (other than contingent obligations to the extent no claim giving rise thereto has been asserted), including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding).

Full Payment of the First Priority Debt – has the meaning ascribed to “Discharge of Senior Priority Liabilities” in the Subordination Agreement.

Funded Debt - collectively, without duplication, (i) the aggregate principal amount of Debt for Money Borrowed, including Capitalized Lease Obligations and all First Priority Debt and (ii) all Debt outstanding under any revolving credit, line of credit or renewals thereof), notwithstanding that any such Debt is created within one year of the expiration of such agreement.

GAAP - generally accepted accounting principles in the United States of America in effect from time to time.

General Intangibles - all general intangibles of a Borrower, whether now owned or hereafter created or acquired by a Borrower, including all choses in action, causes of action, company or other business records, inventions, blueprints, designs, patents, patent applications,

trademarks, trademark applications, trade names, trade secrets, service marks, goodwill, brand names, copyrights, registrations, licenses, franchises, customer lists, permits, tax refund claims, computer programs, operational manuals, internet addresses and domain names, insurance refunds and premium rebates, all claims under guaranties, security interests or other security held by or granted to a Borrower to secure payment of any of any of a Borrower's Accounts by an Account Debtor, all rights to indemnification, and all other intangible property of a Borrower of every kind and nature (other than Accounts).

Goods - shall have the meaning given to "goods" in the UCC.

Governing Body - shall mean, with respect to any Person, the board of directors, board of managers, board of representatives, board of advisors or similar governing body of such Person.

Governmental Approvals - all authorizations, consents, approvals, licenses (including, without limitation, all federal firearms licenses) and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

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

Guaranties – the Holdings Guaranty, the SportCo Guaranty and each other guaranty executed by a Guarantor in support of the Obligations.

Guarantor Payment - as defined in **Section 4.11.3**.

Guarantors – Holdings, SportCo and each other Person who guarantees payment or performance of any Obligation.

Hazardous Materials - (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, radon gas and mold; (b) any chemicals, materials, pollutant or substances defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous substances", "restricted hazardous waste", "toxic substances", "toxic pollutants", "contaminants", "pollutants" or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, the exposure to, or release of which is prohibited, limited or regulated by any governmental authority or for which liability or standards of conduct are imposed pursuant to, any Environmental Law.

Hedging Agreement - an agreement relating to any swap, cap, floor, collar, option, forward, cross right or obligation, or combination thereof or similar transaction, with respect to interest rate, foreign exchange, currency, commodity, credit or equity risk.

Holdings – United Sporting Companies, Inc., a Delaware corporation.

Holdings Guaranty – that certain Guaranty dated as of the date hereof and made by Holdings, as the same may be amended, modified or replaced in accordance with the terms hereof.

Indemnified Amount - in the case of Agent Indemnitees, the amount of any loss, cost, expenses or damages suffered or incurred by Agent Indemnitees and against which Lenders or any Obligor have agreed to indemnify and Agent Indemnitees pursuant to the terms of the Agreement or any of the other Loan Documents; and in the case of Lender Indemnitees, the amount of any loss, cost, expenses or damages suffered or incurred by Lender Indemnitees and against which Lender or any Obligor have agreed to indemnify Lender Indemnitees pursuant to the terms of the Agreement or any of the other Loan Documents;

Indemnified Taxes - Taxes other than Excluded Taxes.

Indemnitees - the Agent Indemnitees and the Lender Indemnitees.

Insolvency Proceeding - any action, case or proceeding commenced by or against a Person, or any agreement of such Person, for (i) the entry of an order for relief under any chapter of the Bankruptcy Code or other insolvency, moratorium or debt adjustment law (whether state, federal or foreign), (ii) the appointment of a receiver, trustee, liquidator or other custodian for such Person or any part of its Property, (iii) an assignment or trust mortgage for the benefit of creditors of such Person, or (iv) the liquidation, dissolution or winding up of the affairs of such Person.

Instrument - shall have the meaning given to “instrument” in the UCC.

Intellectual Property - all intellectual and similar Property of every kind and description, including inventions, designs, patents, patent applications, copyrights, trademarks, service marks, trade names, mask works, trade secrets, confidential or proprietary information, know-how, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, all books and records describing or used in connection with the foregoing and all licenses, or other rights to use any of the foregoing.

Intellectual Property Claim - the assertion by any Person of a claim (whether asserted in writing, by action, suit or proceeding or otherwise) that a Borrower’s ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property is violative of any ownership or right to use any Intellectual Property of such Person.

Interest Expense - for any period, the total interest expense of Borrowers payable in cash during such period determined in accordance with GAAP.

Interest Payment Date - shall mean each March 31, June 30, September 30 and December 31 of each year, commencing with December 31, 2012.

Inventory - shall have the meaning given to “inventory” in the UCC and shall include all goods intended for sale by a Borrower, to be furnished by a Borrower under contracts of service, or for display or demonstration; and work in process and all raw materials and other materials and supplies of every nature and description used or which might be used in connection with the

manufacture, printing, packing, shipping, advertising, selling, leasing or furnishing of such goods or otherwise used or consumed in a Borrower's business ("Work-In-Process and Raw Materials"); and all Documents evidencing and General Intangibles relating to any of the foregoing, whether now owned or hereafter acquired by a Borrower.

Investment Property - shall have the meaning given to "investment property" in the UCC and shall include all Securities (whether certificated or uncertificated), security entitlements, securities accounts, commodity contracts and commodity accounts.

IPO - shall mean a successfully completed firm underwritten public offering of the Capital Stock of EB or SportCo (or any direct or indirect parent of EB or SportCo) pursuant to an effective registration under the Securities Act resulting in the sale of more than 25% of such entity's Capital Stock.

IRS - the United States Internal Revenue Service.

Jerry – as defined in the introductory paragraph.

Landlord Agreements - an agreement duly executed in favor of Agent, in form and content acceptable to Agent, by which an owner or mortgagee of premises upon which any Property of an Obligor is located agrees to waive or subordinate any Lien it may have with respect to such Property in favor of Agent's Lien therein and to permit Agent to enter upon such premises and to remove such Property or to use such premises to store or dispose of such Property.

Lender Indemnitee - a Lender in its capacity as a lender under the Agreement and its present and future officers, directors, employees, agents and attorneys.

Lenders – Prospect, Summit, and any other Person who may from time to time become a "Lender" under the Agreement.

Lending Office - the office designated as such by the applicable Lender at the time it becomes party to this Agreement or thereafter by notice to EB.

LIBOR Rate – means (i) the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source designated by Agent); or (ii) if BBA LIBOR is not available for any reason, the interest rate at which Dollar deposits in the approximate amount of the LIBOR Loan would be offered by Bank of America's London branch to major banks in the London interbank Eurodollar market, in each case for an interest period of one (1) month. Each determination by Agent of any LIBOR Rate shall, in the absence of any manifest error, be conclusive.

License - any license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Lien - any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on common law, statute or

contract. The term “Lien” shall also include reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting Real Estate. For the purpose of the Agreement, a Borrower shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

Loan Documents - the Agreement, the Other Agreements and the Security Documents.

Margin Stock - shall have the meaning ascribed to it in Regulation U and of the Board of Governors.

Material Adverse Effect - the effect of any event, condition, action, omission or circumstance, which, alone or when taken together with other events, conditions, actions, omissions or circumstances occurring or existing concurrently therewith, (i) has a material adverse effect upon the business, operations, Properties or condition (financial or otherwise) of Borrowers, taken as a whole; (ii) has or could be reasonably expected to have any material adverse effect whatsoever upon the validity or enforceability of the Agreement or any of the other Loan Documents; (iii) has any material adverse effect upon the value of the whole or any material part of the Collateral, the Liens of Agent with respect to the Collateral or the priority of any such Liens; (iv) materially impairs the ability of any other Obligor to perform its obligations under this Agreement or any of the other Loan Documents, including repayment of any of the Obligations when due; or (v) materially impairs the ability of Agent or any Lender to enforce or collect the Obligations or realize upon any of the Collateral in accordance with the Loan Documents and Applicable Law.

Material Contract - an agreement to which an Obligor is a party (other than the Loan Documents) if (i) such agreement is deemed to be a material contract as provided in Regulation S-K promulgated by the SEC under the Securities Act of 1933 or (ii) the breach, termination, cancellation or nonperformance of or failure to renew such agreement could reasonably be expected to have a Material Adverse Effect.

Maturity Date – May 16, 2018.

Maximum Rate - the maximum non-usurious rate of interest permitted by Applicable Law that at any time, or from time to time, may be contracted for, taken, reserved, charged or received on the Debt in question or, to the extent that at any time Applicable Law may thereafter permit a higher maximum non-usurious rate of interest, then such higher rate. Notwithstanding any other provision hereof, the Maximum Rate shall be calculated on a daily basis (computed on the actual number of days elapsed over a year of three hundred and sixty (360) days.

Money Borrowed - as applied to any Person, without duplication, (i) Debt for money borrowed on the Consolidated balance sheet of such Person prepared in accordance with GAAP; (ii) Debt arising from the lending of money by any other Person to such Person; (iii) Debt, whether or not in any such case arising from the lending of money by another Person to such Person, (A) which is represented by notes payable or drafts accepted that evidence extensions of credit, (B) which constitutes obligations evidenced by bonds, debentures, notes or similar

instruments, or (C) upon which interest charges are customarily paid (other than accounts payable) or that was issued or assumed as full or partial payment for Property; (iv) Debt that constitutes a Capitalized Lease Obligation; (v) all letters of credit or letter of credit guaranties outstanding for the account of such Person and, without duplication, all reimbursement obligations in connection therewith and (vi) Debt of such Person under any guaranty of obligations that would constitute Debt for Money Borrowed under clauses (ii) through (iv) hereof, if owed directly by such Person.

Moody's - Moody's Investors Services, Inc.

Mortgage - a mortgage, deed of trust or deed to secure debt in which a Borrower grants a Lien on its Real Estate to Agent, as security for the Obligations.

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

Net Book Value - Cost minus accumulated depreciation that is calculated (i) in accordance with GAAP and (ii) consistently with Borrowers' accounting practices in place on the Closing Date.

Notes - each promissory note executed by Borrowers at Agent's request to evidence any of the Obligations.

Notice of Borrowing - as defined in **Section 3.1.1(i)** of the Agreement.

Notice of Conversion/Continuation - as defined in **Section 2.1.2(ii)** of the Agreement.

Notice of Grant of Security Interest in Intellectual Property - the notice delivered by Borrowers on the Closing Date to be filed in the United States Patent and Trademark Office.

Obligations - in each case, whether now in existence or hereafter arising, (i) the principal of, and interest and premium, if any, on, the Term Loan; and (ii) all other Debts, covenants, duties and obligations (including Contingent Obligations) now or at any time or times hereafter owing by any Obligor to Agent or any Lender under or pursuant to the Agreement or any of the other Loan Documents, whether evidenced by any note or other writing, whether arising from any extension of credit, opening of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several, including all interest, charges, expenses, fees or other sums (including Extraordinary Expenses) chargeable to any or all Obligors hereunder or under any of the Loan Documents.

Obligor - Each Borrower, each Guarantor and each other Person that is at any time liable for the payment of the whole or any part of the Obligations or that has granted in favor of Agent a Lien upon any of such Person's assets to secure payment of any of the Obligations.

Observer - as defined in **Section 9.1.10** of the Agreement.

Office Accounts – those certain deposit accounts (account numbers 2076700001962 and 2010000028973) administered by Wells Fargo Bank, National Association and owned by EB.

Ordinary Course of Business - with respect to any transaction involving any Person, the ordinary course of such Person's business, as conducted by such Person in accordance with past practices and reasonable adjustments thereto and undertaken by such Person in good faith and not for the purpose of evading any covenant or restriction in any Loan Document.

Organization Documents - with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, operating agreement, members agreement, partnership agreement, voting trust, or similar agreement or instrument governing the formation or operation of such Person.

Original Lender – means each of Prospect and Summit for as long as such Person owns and controls at least fifty percent (50%) of (A) the Term Loans being made by it hereunder on the Closing Date, minus (B) any prepayments of principal amounts of such Term Loans.

OSHA - the Occupational Safety and Hazard Act of 1970.

Other Agreements - the Notes, the Subordination Agreement, the Structuring Fee Letters and any and all agreements, instruments and documents (other than the Agreement and the Security Documents), heretofore, now or hereafter executed by a Borrower or Borrowers, any Obligor or any other Person and delivered to Agent or any Lender in respect of the transactions contemplated by the Agreement.

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

Outdoor - as defined in the introductory paragraph.

Participant - as defined in **Section 13.2.1**.

Participant Register - as defined in **Section 13.2.1**.

Patriot Act - the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, [115 Stat. 272](#) (2001).

Payment Intangibles - shall have the meaning given to “payment intangible” in the UCC.

Payment Items - all checks, drafts, or other items of payment payable to a Borrower, including proceeds of any of the Collateral.

PBGC - the Pension Benefit Guaranty Corporation or any successor thereto.

Pension Act - the Pension Protection Act of 2006.

Pension Funding Rules - the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

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

Permitted Contingent Obligations - Contingent Obligations arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business; Contingent Obligations arising from guaranties of the Debt (to the extent permitted under **Section 9.2.3**) of one Borrower for the benefit of its Subsidiaries or another Borrower; Contingent Obligations of a Borrower and its Subsidiaries existing as of the Closing Date, including extensions and renewals thereof that do not increase the amount of such Contingent Obligations as of the date of such extension or renewal; Contingent Obligations incurred in the Ordinary Course of Business with respect to surety bonds, appeal bonds, performance bonds and other similar obligations; Contingent Obligations arising under indemnity agreements to title insurers to cause such title insurers to issue to Agent title insurance policies; Contingent Obligations with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of Equipment permitted under **Section 7.4.2** of the Agreement; and other Contingent Obligations not to exceed \$230,000 in the aggregate at any time.

Permitted Lien - a Lien of a kind specified in **Section 9.2.5** of the Agreement.

Person - an individual, partnership, corporation, limited liability company, limited liability partnership, joint stock company, land trust, business trust, or unincorporated organization, or a Governmental Authority.

Plan - a Multiemployer Plan or a Pension Plan.

Pledge and Security Agreement – that certain Pledge and Security Agreement dated as of the date hereof, by and among SportCo, Holdings, Borrowers and Agent, as the same may be amended, modified or replaced in accordance with the terms hereof.

Prepayment Premium – shall mean, without duplication, (i) with respect to any voluntary prepayment made pursuant to **Section 4.3.1** or **Section 4.3.2** other than in connection with an IPO, (x) if such prepayment is made after the first anniversary of the Closing Date and on or prior to the second anniversary of the Closing Date, an amount equal to three percent (3.0%) of the principal balance of the Term Loans being prepaid, (y) if such prepayment is made after the second anniversary of the Closing Date and on or prior to the third anniversary of the Closing Date, an amount equal to two percent (2.0%) of the principal balance of the Term Loans being prepaid, and (z) if such prepayment is made after the third anniversary of the Closing Date and

on or prior to the fourth anniversary of the Closing Date, an amount equal to one percent (1.0%) of the principal balance of the Term Loans being prepaid, and (ii) with respect to any voluntary prepayment made pursuant to **Section 4.3.1** in connection with an IPO, or a mandatory prepayment made pursuant to **Section 4.3.4**, **Section 4.3.5**, **Section 4.3.8** or **Section 4.3.9**, if such prepayment is made after the first anniversary of the Closing Date and on or prior to the fourth anniversary of the Closing Date, an amount equal to one percent (1.0%) of the principal balance of the Term Loans being prepaid.

Pro Rata - a share of or in all liabilities, payments, proceeds, collections, Collateral and Extraordinary Expenses, which share for any Lender on any date shall be a percentage (expressed as a decimal, rounded to the ninth decimal place) arrived at by dividing the amount of the Term Loans of such Lender on such date by the aggregate amount of the Term Loans of all Lenders on such date.

Projections - Borrowers' forecasted (i) Consolidated profit and loss statements, cash flow statements, and capitalization statements, depicted on a month-by-month basis, all prepared on a consistent basis with Borrowers' historical financial statements, together with (ii) appropriate supporting details and a statement of underlying assumptions.

Properly Contested - in the case of any Debt of an Obligor (including any Taxes) that is not paid as and when due or payable by reason of such Obligor's bona fide dispute concerning its liability to pay same or concerning the amount thereof, (i) such Debt is being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (ii) such Obligor has established appropriate reserves as shall be required in conformity with GAAP; (iii) the non-payment of such Debt will not have a Material Adverse Effect; (iv) no Lien is imposed upon any of such Obligor's assets with respect to such Debt unless such Lien is at all times junior and subordinate in priority to the Liens in favor of Agent (except only with respect to property taxes that have priority as a matter of applicable state law) and enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute; (v) if the Debt results from, or is determined by the entry, rendition or issuance against an Obligor or any of its assets of a judgment, writ, order or decree, enforcement of such judgment, writ, order or decree is stayed pending a timely appeal or other judicial review; and (vi) if such contest is abandoned, settled or determined adversely (in whole or in part) to such Obligor, such Obligor forthwith pays such Debt and all penalties, interest and other amounts due in connection therewith.

Property - any interest in any kind of property or asset, whether real, personal or mixed and whether tangible or intangible.

Prospect – means Prospect Capital Corporation, together with its Affiliates and Approved Funds that are assignees of any Loan Documents, or any rights or obligations thereunder, in accordance with **Section 13.3.1**.

Prospect Structuring Fee Letter – that certain letter by and between EB and Prospect dated as of the date hereof whereby EB agrees to pay to Prospect its portion of the structuring fee referenced in **Section 2.2**.

Purchase Money Debt - (a) Debt (other than the Obligations) for payment of any of the purchase price of any fixed assets; (b) Debt (other than the Obligations) incurred within 10 days before or after acquisition of any such fixed assets, for the purpose of financing any portion of the purchase price thereof and actually used for such purpose; and (c) any renewals, extensions or refinancings (but not increases) thereof.

Purchase Money Lien - a Lien that secures Purchase Money Debt, encumbering only the fixed assets acquired with such Debt and constituting a Capital Lease or a purchase money security interest under the UCC.

Real Estate - all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Register - as defined in **Section 13.3.1**.

Regulation D - Regulation D of the Board of Governors.

Reimbursement Date - as defined in **Section 1.3.2(i)** of the Agreement.

Related Real Estate Documents - with respect to any Real Estate subject to a Mortgage, the following, in form and substance reasonably satisfactory to Agent and received by Agent for review at least 10 days prior to the effective date of the Mortgage: (a) a mortgagee title policy (or binder therefor) covering Agent's interest under the Mortgage, in a form and amount and by an insurer reasonably acceptable to Agent, which must be fully paid on such effective date; (b) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as Agent may reasonably request with respect to other Persons having an interest in the Real Estate; (c) an as-built survey of the Real Estate, containing a metes-and-bounds property description and certified by a licensed surveyor reasonably acceptable to Agent; (d) a life-of-loan flood hazard determination and, if the Real Estate is located in a flood plain, an acknowledged notice to borrower and flood insurance in an amount, with endorsements and by an insurer reasonably acceptable to Agent; (e) upon request of Agent, an environmental assessment, prepared by environmental engineers reasonably acceptable to Agent, and accompanied by such reports, certificates, studies or data as Agent may reasonably require, which shall all be in form and substance reasonably satisfactory to Required Lenders; (f) a favorable opinion of counsel to the Borrowers from each jurisdiction in which Real Estate subject to a Mortgage is located, in form and substance satisfactory to Agent and from a Person reasonably acceptable to Agent (it being understood and agreed that an opinion in the form of those delivered on the Closing Date shall be acceptable); and (g) such other documents, instruments or agreements as Agent may reasonably require with respect to any environmental risks regarding the Real Estate.

Rentals - as of the date of determination, all payments which the lessee is required to make by the terms of any lease.

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

Required Lenders – Lenders holding Term Loans representing in excess of 50% of the aggregate principal amount of all Term Loans then outstanding; provided, that, (a) at any time

when Prospect and Summit both remain as Original Lenders, “Required Lenders” shall mean both such Original Lenders together with additional Lenders (to the extent required) to represent in excess of 50% of the aggregate Term Loans then outstanding, and (b) at any time when either Prospect or Summit remains as an Original Lender, “Required Lenders” shall mean either such Original Lender together with additional Lenders (to the extent required) to represent in excess of 50% of the aggregate Term Loans then outstanding.

Restricted Investment - any acquisition of Property by a Borrower or any of its Subsidiaries in exchange for cash or other Property, whether in the form of an acquisition of Equity Interests or Debt, or the purchase or acquisition by a Borrower or any Subsidiary of any other Property, or a loan, advance, capital contribution or subscription, except acquisitions of the following: (i) fixed assets to be used in the Ordinary Course of Business of a Borrower or any Subsidiary; (ii) goods held for sale or lease or to be used in the manufacture of goods or the provision of services by a Borrower or any Subsidiary in the Ordinary Course of Business; (iii) Current Assets arising from the sale or lease of goods or the rendition of services in the Ordinary Course of Business of a Borrower or any Subsidiary; (iv) investments in Subsidiaries to the extent existing on the Closing Date; and (v) Cash Equivalents to the extent they are not subject to rights of offset in favor of any Person other than Agent or a Lender; and (vi) loans and other advances of money to the extent not prohibited by **Section 9.2.2**.

Restrictive Agreement - an agreement (other than any of the Loan Documents) that, if and for so long as an Obligor or any Subsidiary of such Obligor is a party thereto, would prohibit, condition or restrict such Obligor’s or Subsidiary’s right to incur or repay Debt for Money Borrowed (including any of the Obligations); grant Liens upon any of such Obligor’s or Subsidiary’s assets (except in connection with the acquisition of such asset and including Liens granted in favor of Agent pursuant to the Loan Documents); declare or make Distributions; amend, modify, extend or renew any agreement evidencing Debt for Money Borrowed (including any of the Loan Documents); or repay any Debt owed to another Obligor.

Royalties - all royalties, fees, expense reimbursement and other amounts payable by a Borrower under a License.

S&P - Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors.

SEC - Securities and Exchange Commission.

Secured Parties - Agent, each Lender and each Affiliate of a Lender to the extent such Affiliate holds Obligations hereunder.

Security - shall have the same meaning as in Section 2(1) of the Securities Act of 1933.

Security Documents - the Notices of Grant of Security Interest in Intellectual Property, the Deposit Account Assignments, the Business Interruption Insurance Assignment, the Guaranties, the Pledge and Security Agreement, the Related Real Estate Documents for all Real Estate subject to a Mortgage and all other mortgages, instruments and agreements now or at any time hereafter securing the whole or any part of the Obligations.

Senior Officer - the chairman of the board of directors, chairman of the executive committee, the president or the chief financial officer of, or in-house legal counsel to, a Borrower.

Simmons - as defined in the introductory paragraph.

Software - shall have the meaning given to “software” in the UCC.

Solvent - as to any Person, such Person (i) owns Property whose fair saleable value is greater than the amount required to pay all of such Person’s Debts (including contingent Debts), (ii) is able to pay all of its Debts as such Debts mature, (iii) has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage, and (iv) is not “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code.

SportCo – SportCo Holdings, Inc., a Delaware corporation.

SportCo Guaranty – that certain Guaranty dated as of the date hereof and made by SportCo, as the same may be amended, modified or replaced in accordance with the terms hereof.

Statutory Reserves - on any date, the percentage (expressed as a decimal) established by the Board of Governors which is the then stated maximum rate for all reserves (including any emergency, supplemental or other marginal reserve requirements) applicable to any member bank of the Federal Reserve System in respect to Eurocurrency Liabilities (or any successor category of liabilities under Regulation D). Such reserve percentage shall include those imposed pursuant to said Regulation D. The Statutory Reserve shall be adjusted automatically on and as of the effective date of any change in such percentage.

Structuring Fee Letters – means the Prospect Structuring Fee Letter and the Summit Structuring Fee Letter, collectively.

Subordinated Debt - Debt incurred by a Borrower that is expressly subordinate and junior in right of payment to Full Payment of all Obligations, and is on terms (including maturity, interest, fees, repayment, covenants and subordination) satisfactory to Agent and Required Lenders.

Subordination Agreement - the Intercreditor and Subordination Agreement of even date herewith by and among First Priority Agent, the lenders party to the First Priority Debt Documents, Agent and the Lenders as the same may be amended, modified or replaced in accordance with the terms thereof.

Subsidiary - any Person in which more than 50% of its outstanding Voting Securities or more than 50% of all Equity Interests is owned directly or indirectly by a Borrower, by one or more other Subsidiaries of a Borrower or by a Borrower and one or more other Subsidiaries.

Summit – means Summit Partners Credit Fund, L.P., Summit Partners Credit Fund A-1, L.P., Summit Investors I, LLC, and Summit Investors I (UK), LP, collectively, together with

their respective Affiliates and Approved Funds that are assignees of any Loan Documents, or any rights or obligations thereunder, in accordance with **Section 13.3.1**.

Summit Structuring Fee Letter – that certain letter by and between Summit Partners Credit Advisors, L.P., Summit and EB, dated as of the date hereof whereby EB agrees to pay Summit’s portion of the structuring fee referenced in **Section 2.2** to Summit Partners Credit Advisors, L.P.

Supporting Obligations - shall have the meaning given to “supporting obligations” in the UCC.

Tangible Chattel Paper - shall have the meaning given to “tangible chattel paper” in the UCC.

Taxes - all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

Term Loan – means a term loan issued hereunder.

Transactions - means, collectively, (i) the execution by the Obligor and their Subsidiaries of the Agreement and the other Loan Documents to which they are or are intended to be a party as of the Closing Date, and the making of Term Loans on the Closing Date, (ii) the execution by the Obligor and their Subsidiaries of the First Priority Debt Documents to which they are or are intended to be a party as of the Closing Date, and issuance of the First Priority Debt on the Closing Date, (iii) payment of the Closing Date Distribution, (iv) the Distribution by EB to Holdings (for further Distribution to SportCo) and the repayment in full of the Wellspring Debt from such Distribution and termination of the Wellspring Debt Documents and (v) the payment of the fees and expenses incurred in connection with the foregoing.

Transferee - as defined in **Section 13.3.3** of the Agreement.

UCC - the Uniform Commercial Code (or any successor statute) as adopted and in force in the State of New York or, when the laws of any other state govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code (or any successor statute) of such state.

Upstream Payment - a payment or distribution of cash or other Property by a Subsidiary to a Borrower, whether in repayment of Debt owed by such Subsidiary to Borrower, to pay dividends on account of a Borrower’s ownership of Equity Interests or otherwise.

Value - with reference to the value of Inventory or Equipment, value determined on the basis of the lower of cost or market of such Inventory or Equipment in accordance with GAAP, with the cost thereof calculated on a first-in, first-out basis determined in accordance with GAAP, and excluding any portion of cost attributable to intercompany profit among Borrowers and their Affiliates.

Voting Power - with respect to any Person, the power ordinarily (without the occurrence of a contingency) to elect the members of the Board of Directors (or persons performing similar functions) of such Person.

Voting Securities - Equity Interests of any class or classes of a corporation or other entity the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors or Persons performing similar functions.

Wells Fargo - Wells Fargo Bank, National Association.

Wellspring – Wellspring Capital Partners IV, L.P., a Delaware limited partnership, and its Affiliates.

Wellspring Debt - the Debt of SportCo evidenced by that certain Amended and Restated Subordinated Term Loan and Guarantee Agreement, dated as of November 16, 2009, by and between SportCo and Wellspring Capital Partners IV, L.P., a Delaware limited partnership, in the aggregate principal amount outstanding of \$35,000,000, together with all related documents and all amendments, supplements, restatements, replacements and modifications thereof.

Accounting Terms. Unless otherwise specified herein, all terms of an accounting character used in the Agreement shall be interpreted, all accounting determinations under the Agreement shall be made, and all financial statements required to be delivered under the Agreement shall be prepared in accordance with GAAP, applied on a basis consistent with the most recent audited Consolidated financial statements of Borrowers and their Subsidiaries heretofore delivered to Agent and Lenders and using the same method for inventory valuation as used in such audited financial statements, except for any change required by GAAP.

Other Terms. All other terms contained in the Agreement shall have, when the context so indicates, the meanings provided for by the UCC to the extent the same are used or defined therein.

Certain Matters of Construction. The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to the Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. 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 means “to but excluding.” The section titles, table of contents and list of exhibits appear as a matter of convenience only and shall not affect the interpretation of the Agreement. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; to any of the Loan Documents shall include any and all modifications thereto and any and all restatements, extensions or renewals thereof; to any Person shall mean and include the successors and permitted assigns of such Person; to “including” and “include” shall be understood to mean “including, without limitation” (and, for purposes of the Agreement and each other Loan Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters to matters similar to the matters specifically mentioned); or to the time of day shall mean the time of day on the day in question in New York, New York, unless otherwise

expressly provided in the Agreement. A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing by Agent pursuant to the Agreement or, in the case of a Default, is cured within any period of cure expressly provided in this Agreement; and an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by Agent. All calculations of Value shall be in Dollars, all Term Loans shall be funded in Dollars and all Obligations shall be repaid in Dollars. Whenever the phrase “to the best of Borrower’s knowledge” or words of similar import relating to the knowledge or the awareness of a Borrower are used in the Agreement or other Loan Documents, such phrase shall mean and refer to (i) the actual knowledge of a Senior Officer of such Borrower or (ii) the knowledge that a Senior Officer would have obtained if they had engaged in good faith and diligent performance of his duties. Whenever in the Agreement and the other Loan Documents reference is made to attorneys’ fees and expenses that are incurred by Agent or a Lender and that are to be reimbursed to Agent or a Lender by Borrowers, such reference shall be understood to mean the reasonable attorneys’ fees and expenses which are incurred by Agent or such Lender for services actually rendered by attorneys selected by Agent or such Lender on Agent’s or such Lender’s behalf.

THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE, IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN INTERCREDITOR AND SUBORDINATION AGREEMENT (THE "SUBORDINATION AGREEMENT") DATED AS OF SEPTEMBER 11, 2012 BETWEEN PROSPECT CAPITAL CORPORATION, AS SECOND PRIORITY AGENT FOR THE SECOND PRIORITY CREDITORS AND BANK OF AMERICA, N.A., AS SENIOR AGENT FOR THE SENIOR CREDITORS, TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY ELLETT BROTHERS, LLC ("ELLETT"), THE OTHER BORROWERS FROM TIME TO TIME PARTY THERETO (TOGETHER WITH ELLETT, INDIVIDUALLY A "BORROWER" AND COLLECTIVELY THE "BORROWERS"), PURSUANT TO THAT CERTAIN THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT, DATED AS OF SEPTEMBER 11, 2012, BY AND AMONG THE BORROWERS, THE LENDERS FROM TIME TO TIME PARTY THERETO AND BANK OF AMERICA, N.A., AS AGENT, AND THE INDEBTEDNESS OWED BY ANY GUARANTORS UNDER GUARANTIES WITH RESPECT THERETO, AS SUCH AGREEMENTS HAVE BEEN AND HEREAFTER MAY BE AMENDED, RESTATED, SUPPLEMENTED, EXTENDED, RENEWED, REFINANCED, REPLACED OR OTHERWISE MODIFIED AND TO ANY INDEBTEDNESS REFINANCING THE INDEBTEDNESS UNDER SUCH AGREEMENTS AS CONTEMPLATED BY THE SUBORDINATION AGREEMENT; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT.

EXHIBIT A

FORM OF TERM NOTE

\$[_____]

Date: [_____]

FOR VALUE RECEIVED, each of the undersigned, **ELLETT BROTHERS, LLC**, a South Carolina limited liability company ("**EB**"), **EVANS SPORTS, INC.**, a South Carolina corporation ("**Evans**"), **JERRY'S SPORTS, INC.** ("**Jerry**"), a Delaware corporation, **SIMMONS GUN SPECIALTIES, INC.**, a Delaware corporation ("**Simmons**"), **BONITZ BROTHERS, INC.**, a Delaware corporation ("**Bonitz**"), and **OUTDOOR SPORTS HEADQUARTERS, INC.**, a Delaware corporation ("**Outdoor**"; together with **EB**, **Evans**, **Jerry**, **Simmons** and **Bonitz**, each a "**Borrower**" and collectively, "**Borrowers**"), hereby jointly and severally unconditionally promises to pay to [_____] (herein, together with any subsequent holder hereof, called the "**Holder**") the principal sum of \$[_____] pursuant to the terms of the Loan Agreement (as defined below) on the date on which such outstanding principal amounts become due and payable pursuant to **Section 4.3** of the Loan Agreement, in strict accordance with the terms thereof. Each Borrower likewise jointly and severally unconditionally promises to pay to Holder interest from and after the date hereof on the outstanding principal amount of Term Loans at such interest rates, payable at such times, and computed in such manner as are specified in **Section 2.1** of the Loan Agreement, in strict accordance with the terms thereof.

This Term Note (“Note”) is issued pursuant to, and is one of the “Notes” referred to in, that certain Second Lien Loan and Security Agreement dated as of September [28], 2012 (as the same may be amended from time to time, the “Loan Agreement”), between Borrowers, Prospect Capital Corporation, as collateral and administrative agent (in such capacity, “Agent”) for itself and the financial institutions from time to time parties thereto as lenders (“Lenders”), such Lenders and the other parties named therein, and Holder is and shall be entitled to all benefits thereof and of all Loan Documents executed and delivered in connection therewith. All capitalized terms used herein, unless otherwise defined herein, shall have the meanings ascribed to such terms in the Loan Agreement.

The repayment of the principal balance of this Note is subject to the provisions of **Section 4.3** of the Loan Agreement. The entire unpaid principal balance and all accrued interest on this Note shall be due and payable immediately upon the Maturity Date.

All payments of principal and interest shall be made in Dollars in immediately available funds as specified in the Loan Agreement.

Upon or after the occurrence of an Event of Default and for so long as such Event of Default exists, the principal balance and all accrued interest of this Note may be declared due and payable in the manner and with the effect provided in the Loan Agreement, and the unpaid principal balance hereof shall bear interest at the Default Rate as and when provided in **Section 2.1.3** of the Loan Agreement. Each Borrower agrees to pay, and save Holder harmless against any liability for the payment of, all costs and expenses, including, but not limited to, reasonable attorneys’ fees, if this Note is collected by or through an attorney-at-law.

All principal amounts of Term Loans made by Holder to Borrowers pursuant to the Loan Agreement, and all accrued and unpaid interest thereon, shall be deemed outstanding under this Note and shall continue to be owing by Borrowers until paid in accordance with the terms of this Note and the Loan Agreement.

In no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance or detention of money advanced hereunder exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto; and, in the event of any such payment inadvertently paid by Borrowers or inadvertently received by Holder, such excess sum shall be, at Borrowers’ option, returned to Borrowers forthwith or credited as a payment of principal, but shall not be applied to the payment of interest. It is the intent hereof that Borrowers not pay or contract to pay, and that Holder not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Borrowers under Applicable Law.

Time is of the essence of this Note. To the fullest extent permitted by Applicable Law, each Borrower, for itself and its legal representatives, successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, notice of non-payment, notice of maturity, notice of protest, presentment for the purpose of accelerating maturity, diligence in collection, and the benefit of any exemption or insolvency laws.

Wherever possible each provision of this Note shall be interpreted in such a manner as to be effective and valid under Applicable Law, but if any provision of this Note shall be prohibited or invalid under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Note. No delay or failure on the part of Holder in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise by Holder of any right or remedy preclude any other right or remedy. Agent, at its option, may enforce its rights against any Collateral securing this Note without Agent or Holder enforcing its rights against any Borrower or any other property or indebtedness due or to become due to a Borrower. Each Borrower agrees that, without releasing or impairing such Borrower's liability hereunder, Holder or Agent may at any time release, surrender, substitute or exchange any Collateral securing this Note and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this Note.

The rights of Holder and obligations of Borrowers hereunder shall be construed in accordance with and governed by the laws (without giving effect to the conflict of law principles thereof) of the State of New York. This Note is intended to take effect as an instrument under seal under New York law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each Borrower has caused this Note to be executed under seal and delivered by its duly authorized officers on the date first above written.

BORROWERS:

ELLETT BROTHERS, LLC

By: _____
Name: _____
Title: _____

EVANS SPORTS, INC.

By: _____
Name: _____
Title: _____

JERRY'S SPORTS, INC.

By: _____
Name: _____
Title: _____

SIMMONS GUN SPECIALTIES, INC.

By: _____
Name: _____
Title: _____

BONITZ BROTHERS, INC.

By: _____
Name: _____
Title: _____

[signature pages continue]

OUTDOOR SPORTS HEADQUARTERS, INC.

By: _____

Name: _____

Title: _____

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

[To be issued on a Monthly Basis]

[Letterhead of Borrowers]

[_____]

Prospect Capital Corporation, as Agent
10 E. 40th Street, 44th Floor
New York, NY 10016

Reference is made to that certain Second Lien Loan and Security Agreement dated as of September [28], 2012, by and among **ELLETT BROTHERS, LLC**, a South Carolina limited liability company ("EB"), **EVANS SPORTS, INC.**, a South Carolina corporation ("Evans"), **JERRY'S SPORTS, INC.**, a Delaware corporation ("Jerry"), **SIMMONS GUN SPECIALTIES, INC.**, a Delaware corporation ("Simmons"), **BONITZ BROTHERS, INC.**, a Delaware corporation ("Bonitz"), **OUTDOOR SPORTS HEADQUARTERS, INC.**, a Delaware corporation ("Outdoor"; together with EB, Evans, Jerry, Simmons and Bonitz, each a "Borrower" and collectively, "Borrowers"), **PROSPECT CAPITAL CORPORATION**, as collateral and administrative agent (in such capacity, "Agent") for itself and the financial institutions from time to time parties thereto as lenders ("Lenders"), such Lenders and the other parties named therein (as at any time amended, the "Loan Agreement"). The undersigned, the chief financial officer of each Borrower, gives this certificate in accordance with the requirements of **Section 9.1.3** of the Loan Agreement. Capitalized terms used in this Certificate, unless otherwise defined herein, shall have the meanings ascribed to them in the Loan Agreement.

1. Based upon my review of the balance sheets and statements of income of Borrower and its Subsidiaries for the fiscal month ending [____], copies of which are attached hereto, I hereby certify that:

(i) Consolidated Fixed Charge Coverage Ratio is [____] to 1.0, which is [**in excess of**][**not in excess of**] the ratio set forth in **Section 9.3.1** of the Loan Agreement.

(ii) Consolidated Total Leverage Ratio is [____] to 1.0, which is [in excess of][not in excess of] the ratio set forth in **Section 9.3.2** of the Loan Agreement.

2. No Default exists on the date hereof, other than [_____] (if none, so state).

3. No Event of Default exists on the date hereof, other than [_____] (if none, so state).

4. As of the date hereof, each Borrower is current in its payment of all accrued rent and other charges to Persons who own or lease any premises where any of the Collateral is

located, and there are no pending disputes or claims regarding such Borrower's failure to pay or delay in payment of any such rent or other charges.

5. Attached hereto as Exhibit A are calculations that support the statements of the Borrowers' set forth in Section 1 above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Very truly yours,

ELLETT BROTHERS, LLC
EVANS SPORTS, INC.
JERRY'S SPORTS, INC.
SIMMONS GUN SPECIALTIES, INC.
BONITZ BROTHERS, INC.
OUTDOOR SPORTS HEADQUARTERS, INC.

By: _____

Name: _____

Title: Chief Financial Officer

EXHIBIT A

CONSOLIDATED FIXED CHARGE COVERAGE RATIO

Twelve (12) month period ending: [_____]

With respect to any period of Borrowers, on a Consolidated basis, the ratio of Borrowers':

A. Numerator:

1. Adjusted EBITDA for such period: \$[_____]
2. cash income taxes and Distributions paid for such period: \$[_____]
3. Consolidated Capital Expenditures (other than Capital Expenditures financed with Money Borrowed other than Revolver Loans) for such period: \$[_____]
4. A1 minus A2 minus A3: \$[_____]

B. Denominator: for any period,

1. Interest Expense during such period: \$[_____]
2. on the date of determination, the Current Maturities of Funded Debt: \$[_____]
3. B1 plus B2: \$[_____]

Consolidated Fixed Charge Coverage Ratio (A4 divided by B3): [_____] to 1.00

EXHIBIT B

CONSOLIDATED TOTAL LEVERAGE RATIO

Twelve (12) month period ending: [_____]

With respect to any period of Borrowers, on a Consolidated basis, the ratio of Borrowers':

A. Numerator:

1. Debt for Money Borrowed (including Capitalized Leased Obligations of all First Priority Debt): \$[_____]
2. Debt outstanding under any revolving credit, line of credit or renewals thereof, notwithstanding that any such Debt is created within one year of the expiration of such agreement: \$[_____]
3. A1 plus A2: \$[_____]

B. Denominator:

1. Adjusted EBITDA for such Period: \$[_____]

Consolidated Total Leverage Ratio (A3 divided by B1): [_____] to 1.00

EXHIBIT C

FORM OF ASSIGNMENT AND ACCEPTANCE

Date: [_____]

Reference is made to that certain Second Lien Loan and Security Agreement dated as of September [28], 2012, by and among **ELLETT BROTHERS, LLC**, a South Carolina limited liability company ("EB"), **EVANS SPORTS, INC.**, a South Carolina corporation ("Evans"), **JERRY'S SPORTS, INC.**, a Delaware corporation ("Jerry"), **SIMMONS GUN SPECIALTIES, INC.**, a Delaware corporation ("Simmons"), **BONITZ BROTHERS, INC.**, a Delaware corporation ("Bonitz"), **OUTDOOR SPORTS HEADQUARTERS, INC.**, a Delaware corporation ("Outdoor"; together with EB, Evans, Jerry, Simmons and Bonitz, each a "Borrower" and collectively, "Borrowers"), **PROSPECT CAPITAL CORPORATION**, as collateral and administrative agent (in such capacity, "Agent") for itself and the financial institutions from time to time parties thereto as lenders ("Lenders"), such Lenders and the other parties named therein (as at any time amended, the "Loan Agreement"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

[_____] (the "Assignor") and [_____] (the "Assignee") agree as follows:

1. Assignor hereby assigns to Assignee and Assignee hereby purchases and assumes from Assignor (a) a principal amount of \$[_____] of Assignor's outstanding Term Loans (the "Assigned Interest"), together with an interest in the Loan Documents corresponding to the Assigned Interest. This Agreement shall be effective as of the date ("Effective Date") indicated in the corresponding Assignment Notice delivered to Agent, provided such Assignment Notice is executed by Assignor, Assignee, Agent and Borrower Agent, if applicable. From and after the Effective Date, Assignee hereby expressly assumes, and undertakes to perform, all of Assignor's obligations in respect of the Assigned Interest, and all principal, interest, fees and other amounts which would otherwise be payable to or for Assignor's account in respect of the Assigned Interest shall be payable to or for Assignee's account, to the extent such amounts accrue on or after the Effective Date.

2. Assignor (a) represents that as of the date hereof, prior to giving effect to this assignment, the outstanding balance of its Term Loans is \$[_____]; (b) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Agreement or any other instrument or document furnished pursuant thereto, other than that Assignor is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; and (c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrowers or the performance by Borrowers of their obligations under the Loan Documents. [Assignor is attaching the Note[s] held by it and requests that Agent exchange such Note[s] for new Notes payable to Assignee [and Assignor].]

3. Assignee (a) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (b) confirms that it has received copies of the Loan Agreement and such other Loan Documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (c) agrees that it shall, independently and without reliance upon Assignor and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (d) confirms that it is an Eligible Assignee and meets all the requirements to be an assignee under **Section 13.3.4** of the Loan Agreement; (e) appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under the Loan Agreement as are delegated to Agent by the terms thereof, together with such powers as are incidental thereto; (f) agrees that it will observe and perform all obligations that are required to be performed by it as a “Lender” under the Loan Documents; and (g) represents and warrants that the assignment evidenced hereby will not result in a non-exempt “prohibited transaction” under Section 406 of ERISA.

4. This Agreement shall be governed by the laws of the State of New York. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of this Agreement shall remain in full force and effect.

5. Each notice or other communication hereunder shall be in writing, shall be sent by messenger, by telecopy or facsimile transmission or by first-class mail, shall be deemed given when sent and shall be sent as follows:

If to Assignee, to the following address (or to such other address as Assignee may designate from time to time):

If to Assignor, to the following address (or to such other address as Assignor may designate from time to time):

Payments hereunder shall be made by wire transfer of immediately available Dollars as follows:

(a) If to Assignee, to the following account (or to such other account as Assignee may designate from time to time):

ABA No. _____

Account No. _____

Reference: _____

(b) If to Assignor, to the following account (or to such other account as Assignor may designate from time to time):

ABA No. _____

For Account of: _____

Reference: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

("Assignor")

By: _____
Name: _____
Title: _____

("Assignee")

By: _____
Name: _____
Title: _____

EXHIBIT D

FORM OF NOTICE

Reference is made to (i) that certain Second Lien Loan and Security Agreement dated as of September [28], 2012, by and among **ELLETT BROTHERS, LLC**, a South Carolina limited liability company ("EB"), **EVANS SPORTS, INC.**, a South Carolina corporation ("Evans"), **JERRY'S SPORTS, INC.**, a Delaware corporation ("Jerry"), **SIMMONS GUN SPECIALTIES, INC.**, a Delaware corporation ("Simmons"), **BONITZ BROTHERS, INC.**, a Delaware corporation ("Bonitz"), **OUTDOOR SPORTS HEADQUARTERS, INC.**, a Delaware corporation ("Outdoor"; together with EB, Evans, Jerry, Simmons and Bonitz, each a "Borrower" and collectively, "Borrowers"), **PROSPECT CAPITAL CORPORATION**, as collateral and administrative agent (in such capacity, "Agent") for itself and the financial institutions from time to time parties thereto as lenders ("Lenders"), such Lenders and the other parties named therein (as at any time amended, the "Loan Agreement") and (ii) the Assignment and Acceptance dated as of [_____] (the "Assignment Agreement") between [_____] (the "Assignor") and [_____] (the "Assignee"). Except as otherwise defined herein, capitalized terms used herein which are defined in the Loan Agreement are used herein with the respective meanings specified therein.

Assignor hereby notifies Borrowers and Agent of Assignor's intent to assign to Assignee pursuant to the Assignment Agreement (a) a principal amount of \$[_____] of Assignor's outstanding Term Loans (the "Assigned Interest"), together with an interest in the Loan Documents corresponding to the Assigned Interest. This Agreement shall be effective as of the date ("Effective Date") indicated below, provided this Assignment Notice is executed by Assignor, Assignee, Agent and Borrower Agent, if applicable. Pursuant to the Assignment Agreement, Assignee has expressly assumed all of Assignor's obligations under the Loan Agreement to the extent of the Assigned Interest, as of the Effective Date.

The address of Assignee to which notices and information are to be sent under the terms of the Loan Agreement is:

The address of Assignee to which payments are to be sent under the terms of the Loan Agreement is shown in the Assignment and Acceptance.

This Notice is being delivered to the Borrowers and Agent pursuant to **Section 13.3** of the Loan Agreement. Please acknowledge your receipt of this Notice by executing and returning to Assignee and Assignor a copy of this Notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have caused the execution of this Notice, as
of [_____].

("Assignor")

By: _____
Name: _____
Title: _____

("Assignee")

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND AGREED TO AS OF
THE DATE SET FORTH ABOVE: *

ELLETT BROTHERS, LLC

By: _____
Name: _____
Title: _____

EVANS SPORTS, INC.

By: _____
Name: _____
Title: _____

JERRY'S SPORTS, INC.

By: _____
Name: _____
Title: _____

SIMMONS GUN SPECIALTIES, INC.

By: _____
Name: _____
Title: _____

BONITZ BROTHERS, INC.

By: _____
Name: _____
Title: _____

OUTDOOR SPORTS HEADQUARTERS, INC.

By: _____
Name: _____
Title: _____

* No signature required if Assignee is a Lender, Affiliate of a Lender or Approved Fund, or if an Event of Default exists.

ACKNOWLEDGED AND AGREED TO AS OF
THE DATE SET FORTH ABOVE:

PROSPECT CAPITAL CORPORATION,
as Agent

By: _____
Name: _____
Title: _____

**ELLETT BROTHERS, LLC
EVANS SPORTS, INC.
JERRY'S SPORTS, INC.
SIMMONS GUN SPECIALTIES, INC.
BONITZ BROTHERS, INC.
and
OUTDOOR SPORTS HEADQUARTERS, INC.**

as Borrowers

SECOND LIEN LOAN AND SECURITY AGREEMENT
Dated: **September 28, 2012**

**THE FINANCIAL INSTITUTIONS
PARTY HERETO FROM TIME TO TIME, as Lenders**

and

PROSPECT CAPITAL CORPORATION, as Agent

Index to Schedules

Schedule 7.1.1	Borrowers' Business Locations
Schedule 7.1.2	Insurance
Schedule 7.6	Deposit Accounts
Schedule 8.1.1	Jurisdictions in which Borrowers and each Subsidiary is Authorized to do Business
Schedule 8.1.4	Capital Structure of Borrowers
Schedule 8.1.5	Corporate Names
Schedule 8.1.12	Surety Obligations
Schedule 8.1.13	Tax Identification Numbers of Borrowers and Subsidiaries
Schedule 8.1.15	Patents, Trademarks, Copyrights and Licenses
Schedule 8.1.18	Contracts Restricting Borrowers' Right to Incur Debts
Schedule 8.1.19	Litigation
Schedule 8.1.21	Capitalized and Operating Leases
Schedule 8.1.22	Pension Plans
Schedule 8.1.24	Labor Contracts
Schedule 8.1.28	Disregarded Subsidiaries
Schedule 9.1.14	Post-Closing Matters
Schedule 9.2.3	Existing Debt
Schedule 9.2.5	Permitted Liens
Schedule 9.2.8	Restrictions on Upstream Payments
Schedule 9.2.14	Leases in Connection with the Acquisition

SCHEDULE 7.1.1

BORROWERS' BUSINESS LOCATIONS

<u>Owner / Lessee</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>	<u>Owned/Leased</u>
Evans Sports	801 Industrial Drive	Texas	MO	Leased
Ellett Brothers	130 E. Lake Street	Logan	OH	Leased
Ellett Brothers	150 E. Pennsylvania Ave.	Chester	PA	Leased
Ellett Brothers	267 Columbia Avenue	Richland	SC	Owned
Ellett Brothers	786 Wilson Road,	Newberry	SC	Owned
Ellett Brothers	5.27 ac. adjacent to 267 Columbia Ave	Lexington	SC	Owned
Simmons	20241 W. 207th St.	Johnson	KS	Leased
Bonitz	931 Dana Drive	Dauphin	PA	Leased
Outdoor	967 Water Tower Lane	Montgomery	OH	Leased
Jerry's	121 Main Street	Lackawanna	PA	Leased
Jerry's	76 Stanwell Road	Hartford	CT	Leased
Jerry's	Route 247	Lackawanna	PA	Leased
Ellett Brothers	14361 Commerce Way	Miami-Dade	FL	Leased
Ellett Brothers	5935 Granite Lake Drive	Placer	CA	Leased
Ellett Brothers	2401 Dutch Fork Road	Richland	SC	Leased
Ellett Brothers	5340 Jaycee Avenue	Dauphin	PA	Leased

SCHEDULE 7.1.2

INSURANCE

See attached.

Insurance Broker:

Name: Aon

Address: 10 Lanidex Center West, PO Box 608 Parsippany NJ 07054

Contact: Gary Eppinger

Phone Number: 973-463-6078

SCHEDULE 7.6

DEPOSIT ACCOUNTS

Borrower	Name and Address of Bank	Account No.	Purpose	DACA Required Pursuant to Section 7.6
Ellett Brothers Evans Sports	Wells Fargo	No.2076700001962 No.2010000028973	Office Account Office Account	No No
Ellett Brothers	BB&T	No.5122604227 No.5127388638	MC/Visa Payroll	No No
Ellett Brothers Ellett Brothers Ellett Brothers Ellett Brothers Evans Sports	Bank of America	No.942-922-6652 No.942-922-6759 No.Loan EB 01 No.80231342 No.80231350	Deposits Master Operating Fund operating Accounts Loan Operating Ellett Operating Evans	Yes No No No No
Jerry's Sports Jerry's Sports Jerry's Sports Jerry's Sports	Bank of America	No.383006757948 No. 383007324257 No. 223012078030 No. 002210002980	Collection Account Concentration Account Local Deposit Account Disbursement Account	Yes No No No
Jerry's Sports Jerry's Sports	Wells Fargo N.A.	No. 2000037878708 No. 2000037878724	Office Account Collection Account	No Yes
Jerry's Sports	PNC Bank	No. 42-0222-2224	Collection Account	No

SCHEDULE 8.1.1

JURISDICTIONS IN WHICH BORROWERS AND EACH SUBSIDIARY ARE AUTHORIZED TO DO BUSINESS

<u>Name of Subsidiary</u>	<u>State</u>
Ellett Brothers, LLC	North Carolina Ohio Pennsylvania
Evans Sports, Inc	Missouri
Jerry's Sports, Inc.	Pennsylvania Connecticut
Simmons Gun Specialties, Inc.	Kansas
Bonitz Brothers, Inc.	Pennsylvania
Outdoor Sports Headquarters, Inc.	Ohio

SCHEDULE 8.1.4

CAPITAL STRUCTURE OF BORROWERS AND SUBSIDIARIES

Entity	Ownership information	Formation Date & Place	Class of Shares
ELLETT BROTHERS, LLC	Sole member is United Sporting Companies, Inc.	Formed 11/6/06 in South Carolina	N/A
EVANS SPORTS, INC.	100% of common stock owned by Ellett Brothers, LLC	Formed 4/21/95 in South Carolina	Common – 1,000 shares authorized, issued and outstanding
SAFESPORT MANUFACTURING COMPANY ¹	100% of common stock owned by Ellett Brothers, LLC	Formed 7/28/95 in South Carolina	Common – 1,000 shares issued and outstanding
QUALITY BOXES, INC.	100% of common stock owned by Ellett Brothers, LLC	Formed 8/28/95 in South Carolina	Common – 1,000 shares issued and outstanding
LEISURE SPORTS MARKETING CORPORATION ²	100% of common stock owned by Ellett Brothers, LLC	Formed 12/29/95 in South Carolina	Common – 10,000 shares issued and outstanding

¹ To be dissolved on or about the closing date.

² To be dissolved on or about the closing date.

Entity	Ownership information	Formation Date & Place	Class of Shares
ARCHERY CENTER INTERNATIONAL, INC. ³	100% of common stock owned by Ellett Brothers, LLC	Formed 10/5/99 in South Carolina	Common – 1,000 shares issued and outstanding
WILLOUGHBY & TAYLOR, LLC ⁴	Sole member is Ellett Brothers, LLC	Formed 10/11/07 in Delaware	N/A
JERRY’S SPORTS, INC.	100% of common stock owned by Ellett Brothers, LLC	Formed 10/19/09 in Delaware	Common – 100 shares authorized, 1 share issued and outstanding
SIMMONS GUN SPECIALTIES, INC.	100% of common stock owned by Ellett Brothers, LLC	Formed 10/19/09 in Delaware	Common – 100 shares authorized, 1 share issued and outstanding
BONITZ BROTHERS, INC.	100% of common stock owned by Ellett Brothers, LLC	Formed 10/19/09 in Delaware	Common – 100 shares authorized, 1 share issued and outstanding
OUTDOOR SPORTS HEADQUARTERS, INC.	100% of common stock owned by Ellett Brothers, LLC	Formed 10/19/09 in Delaware	Common – 100 shares authorized, 1 share issued and outstanding

³ To be dissolved on or about the closing date.

⁴ To be dissolved on or about the closing date.

<u>Borrower</u>	<u>Name of Corporate Affiliates</u>	<u>Nature of Affiliation</u>
ELLETT BROTHERS, LLC	UNITED SPORTING COMPANIES, INC.	PARENT OF ELLETT BROTHERS, LLC
	SPORTCO HOLDINGS, INC.	PARENT OF UNITED SPORTING COMPANIES, INC.
EVANS SPORTS, INC.	ELLETT BROTHERS, LLC	PARENT OF EVANS SPORTS, INC.
JERRY'S SPORTS, INC.	ELLETT BROTHERS, LLC	PARENT OF JERRY'S SPORTS, INC.
SIMMONS GUN SPECIALTIES, INC.	ELLETT BROTHERS, LLC	PARENT OF SIMMONS GUN SPECIALTIES, INC.
BONITZ BROTHERS, INC.	ELLETT BROTHERS, LLC	PARENT OF BONITZ BROTHERS, INC.
OUTDOOR SPORTS HEADQUARTERS, INC.	ELLETT BROTHERS, LLC	PARENT OF OUTDOOR SPORTS HEADQUARTERS, INC.

SCHEDULE 8.1.5

CORPORATE NAMES

Pursuant to the Asset Purchase Agreement dated as of September 22, 2009, purchase of substantially all of the assets of the seller companies listed below.

Sellers of Assets	Jurisdiction of Incorporation / Formation
Jerry's Sports, Inc.	Pennsylvania
Simmons Gun Specialties, Inc.	Kansas
Bonitz Brothers, Inc.	Pennsylvania
Outdoor Sports Headquarters, Inc.	Ohio
JSC Enterprises, Inc.	Pennsylvania
JSC Financing, Inc.	Delaware
JSC Purchasing and Administration, Inc.	Pennsylvania

SCHEDULE 8.1.12

SURETY OBLIGATIONS

NONE

SCHEDULE 8.1.13

TAX IDENTIFICATION NUMBERS OF BORROWERS AND SUBSIDIARIES

<u>Name of Subsidiary</u>	<u>Tax ID Number</u>
Ellett Brothers, LLC	57-0957069
Evans Sports, Inc	57-1022654
Quality Boxes, Inc	57-1030287
Safesport Manufacturing Co.	57-1027526
Archery Center International, Inc.	57-1085400
Leisure Sports Marketing Corp.	57-1037172
Willoughby & Taylor, LLC	26-1345294
Jerry's Sports, Inc.	27-1144289
Simmons Gun Specialties, Inc.	27-1144364
Bonitz Brothers, Inc.	27-1144441
Outdoor Sports Headquarters, Inc.	27-1144548

SCHEDULE 8.1.15

PATENTS, TRADEMARKS, COPYRIGHTS AND LICENSES

Patents:

<u>Patent</u>	<u>Owner</u>	<u>Federal Registration Number</u>	<u>Registration Date</u>
Apparatus for Recording and Verifying Handwriting, In Particular Signatures	Ellett Brothers, LLC	US 5013874	May 7, 1991

Trademarks:

MARK	SERIAL NUMBER	STATUS	REGISTRATION NUMBER	REGIS. DATE
ELLETT BROTHERS AS BIG AS ALL OUTDOORS.	74-388809	Renewed	1918493	09/12/95
ELLETT BROTHERS	74-388810	Renewed	1838245	05/31/94
AS BIG AS ALL OUTDOORS	74-388811	Renewed	1916955	09/05/95
CHURCHILL	73-744999	Renewed	1727424	10/27/92

Material Unregistered Trademarks:

JERRY'S SPORT CENTER

JSC

JERRY'S SPORT CENTER, INC.

JERRY'S SPORTS CENTER – NORTHEAST

JERRY'S SPORTS CENTER – N/E

JERRY'S SPORTS CENTER – SIMMONS GUN SPECIALTIES

JERRY'S SPORTS CENTER – SIMMONS GUN SPECIALTIES, INC.

JERRY'S SPORTS CENTER – BONITZ BROTHERS

JERRY'S SPORTS CENTER – BONITZ BROTHERS, INC.

JSC – SIMMONS GUN SPECIALTIES

JSC – SIMMONS GUN SPECIALTIES, INC.

JSC – BONITZ BROTHERS

JSC – BONITZ BROTHERS, INC.

JSC, INC. – SIMMONS GUN SPECIALTIES

JSC, INC. – SIMMONS GUN SPECIALTIES, INC.

JSC, INC. – BONITZ BROTHERS

JSC, INC. – BONITZ BROTHERS, INC.

SIMMONS GUN SPECIALTIES – A WHOLLY OWNED SUBSIDIARY OF JSC, INC.

SIMMONS GUN SPECIALTIES, INC. – A WHOLLY OWNED SUBSIDIARY OF JSC, INC.

BONITZ BROTHERS – A WHOLLY OWNED SUBSIDIARY OF JSC, INC.

BONITZ BROTHERS, INC. – A WHOLLY OWNED SUBSIDIARY OF JSC, INC.

OUTDOOR SPORTS HEADQUARTERS, INC.

OUTDOOR SPORTS INTERNATIONAL SALES

Copyrights:

NONE

Patent Licenses:

NONE

Trademark Licenses:

1. License Agreement made and effective as of June 27, 2007 by and between Ellett Brothers, LLC and Springfield, Inc. "Fear No Evil"
2. Ellett Brothers, LLC has been granted limited, non-exclusive licenses to use the trademarks of Sturm Ruger, Mossberg, Glock, Smith & Wesson, Federal Cartridge Company and Ammunition Accessories Inc. and other additional parties pursuant to its distribution agreements.

Copyright Licenses:

1. DCI End-User Software License Agreement dated January 28, 2002 between Ellett Brothers, LLC and Daly. Commerce, Inc.
2. Software Services Agreement, dated January 12, 2012, between Infor Global Solutions (Michigan), Inc. and Ellett Brothers, LLC, as amended.
3. Volume Licensing Agreement, dated November 30, 2012, between Microsoft Licensing, GP and Ellett Brothers, LLC.

SCHEDULE 8.1.18

CONTRACTS RESTRICTING BORROWERS' RIGHT TO INCUR DEBTS

NONE

SCHEDULE 8.1.19

LITIGATION

1. *City of New York v. Beretta, et al. and National Association of the Advancement of Colored People vs. Accusport Corporation.*

In connection with the litigation referenced above, the plaintiff is seeking equitable relief together with recovery of attorney's fees under a nuisance theory. In November 2006, Congress passed and the President signed into law the "Protection of Lawful Commerce in Arms Act" ("PLCAA") which prohibits liability actions against manufacturers, distributors and dealers engaged in lawful commerce in arms. As a result, the defendants, including Ellett Brothers, LLC ("Ellett"), moved to immediately dismiss the action. The district court ruled that the PLCAA was constitutional but did not apply to the case. In the appellate proceeding, the United States Court of Appeals for the Second Circuit ruled in favor of Ellett and the other defendants. The plaintiff has filed a request to have the case heard by the United States Supreme Court.

2. *People v. Arcadia Machine & Tool, Inc., et al*

Pursuant to terms of that certain Memorandum of Understanding dated June 20, 2003, the plaintiffs that were a party to the above-referenced action and Ellett, agreed to settle the litigation. The plaintiffs are permitted to appeal any claims resolved against the plaintiffs in connection with an "Omnibus Motion for Summary Judgment". The plaintiffs have agreed not to pursue any further appeals or any further actions against Ellett, except to enforce the settlement terms included in the Memorandum of Understanding.

3. *Stealth*

In a letter dated June 12, 2006, the owner of the "Stealth" trademark alleged improper use of the "Stealth" corporate name and/or trademark by Ellett Brothers. Stealth also provided a draft Settlement Agreement to Ellett Brothers, pursuant to which Ellett Brothers would agree to pay Twenty-Five Thousand Dollars to resolve the dispute. In a letter to Stealth dated July, 11, 2006, Ellett Brothers affirmatively disclaimed any use, right, or title to the trademark. After sending this letter, Ellett Brothers received no additional correspondence or communications from Stealth relating to this matter.

4. *In re: HA2003, Inc., formerly known as HA-LO Industries, Inc., et. al., v. Quality Boxes, Inc.*

In 2004, Quality Boxes, Inc. received notice of a preferential payment action made against it. Because Quality Boxes, Inc. had no assets to pay the amount and significant net operating losses, Quality Boxes, Inc. did not dispute the action. On June 14, 2004 a default judgment in the amount of \$28,946.75 was entered against Quality Boxes, Inc. in the United States Bankruptcy Court for the Northern District of Illinois. After the judgment was entered, Quality Boxes, Inc. received an attempt to collect from a collection agency. In response to the attempt to collect, Quality Boxes, Inc. provided a copy of Quality Boxes, Inc.'s tax return, which reflected significant net operating losses. After providing a copy of the tax return, Quality Boxes, Inc. received no additional communications regarding this matter.

5. *Theodore Kennedy v. Ellett Brothers, LLC, et al.*

On January 27, 2009, Plaintiff, Theodore Kennedy, an investigator with South Carolina Law Enforcement Division (SLED) suffered injuries while removing paperwork from the trunk of his vehicle when his SLED-issued Remington 870 shotgun discharged, firing buckshot into his chest and abdomen. The shotgun had been placed in a soft case provided by SLED, and Plaintiff kept a self-purchased Shot Lock brand trigger lock over the trigger. Plaintiff alleges that the trigger lock was not properly designed for use with the subject shotgun.

On March 23, 2010, Plaintiff filed a complaint of breach of warranty, strict products liability (including allegations of defective design and manufacture and inadequate warnings), negligence, and negligent misrepresentation against Shot Lock Corp. and Eason Ventures, Inc., f/k/a Dana Safety Supply, Inc., d/b/a Palmetto Distributors, a/k/a Palmetto Firearms. On February 1, 2011, Plaintiff amended his complaint to assert these same claims against Ellett Brothers, LLC (the alleged distributors of the trigger lock) and Palmetto Distributors, Inc. (the alleged retailer of the trigger lock). On August 2, 2011, Plaintiff requested to strike the case from the active docket. On August 1, 2012, plaintiff filed a motion seeking to restore the case to the active docket. When the case was stricken from the docket last year, Plaintiff had yet to provide response to discovery served on him. He also claimed that he had served discovery on the defendants which was never received. In addition, no depositions have been conducted in the case.

6. *Sandra Day Yastremski and Robert C. Hin vs. Jerry's Sports, Inc. and Wellspring Capital Management, LLC.*

The plaintiffs, former employees of Jerry's Sports, Inc., allege that Jerry's Sports, Inc. breached their employment contracts by failing to pay "substantially equivalent" bonuses as those paid to plaintiffs prior to the defendant's acquisition of substantially all the assets of plaintiff's former employer. A complaint was filed on July 22, 2011, and an amended complaint was filed on October 14, 2011. Yastremski claims that \$127,770 was improperly held from the 2010 bonus. Hine claims that \$139,221 as improperly held from the 2010 bonus. The parties are in settlement discussions with respect to the Yastremski claim. The Hine claim is continuing with discovery.

SCHEDULE 8.1.21

CAPITALIZED AND OPERATING LEASES

Capitalized Leases

NONE

Operating Leases

1. Lease Agreement dated as of July 26, 2006, between Community Storage and Properties, Ltd. and Ellett Brothers, LLC (Ohio Office Lease – 130 E. Lake Street, Lakeview, OH 43331)
2. Lease Agreement dated as of January 9, 2006, by and between Mill Town Partners, L.P. and Ellett Brothers, LLC (formerly Ellett Brothers, Inc.) (Pennsylvania Office Lease – 150 E. Pennsylvania Ave. Suite 530, Downingtown, PA 19335).
3. Lease and Option to Purchase dated and effective as of April 24, 1995, as amended, by and between Clydie Evans Jr. and Evans Sports, Inc. (Evans Sports Lease – 801 Industrial Drive, Houston, MO 65)
4. Lease Agreement dated as of December 4, 2002, by and between KZK Associates, LLC and Bonitz Brothers, Inc. (Bonitz Brothers Lease - 931 Dana Drive, Harrisburg, PA 17109)
5. Lease Agreement dated as of July 11, 1996, by and between ECAL Associates, L.P. and Outdoor Sports, Inc., as amended (Outdoor Sports Headquarters Lease - 967 Water Tower Lane, Dayton, Ohio 45449).
6. Lease Agreement dated as of November 15, 2004, as amended by a certain Addendum to Lease, dated March 15, 2005, as further amended by a certain Addendum to Lease, dated Dec. 14, 2007, by and between KZK Associates, LLC and Jerry's Sports, Inc. (Jerry's Sports Lease - 121 Main Street, Vandling, PA 18421)
7. Lease Agreement dated November 1, 2009, by and between Simmons Gun Specialties, Inc. (KS) and Simmons Gun Specialties, Inc. (DE.) for Real Estate and Improvements at 20241 West 207 Street, Spring Hill, KS 66063.
8. Lease Agreement dated November 1, 2009, by and between Jerry's Sports, Inc. (PA.) and Jerry's Sports, Inc. (DE.) for Real Estate and Improvements at 76 Stanwell Road, Newington, CT 06111.
9. Lease Agreement dated November 1, 2009, by and between Jerry's Sports, Inc. (PA.) and Jerry's Sports, Inc. (DE.) for Real Estate and Improvements at Route 247, Montdale, PA 18447.
10. Lease Agreement dated September 7, 2012, by and between Ellett Brothers, LLC (SC.) and ADS 93 Trust (Suite A, 5340 Jaycee Avenue, Harrisburg, PA 17112).
11. Lease Agreement dated January 25, 2012, by and between Ellett Brothers, LLC (SC) and James R. Stock, Sr. (2401 Dutch Fork Road, White Rock, SC 29036).
12. Office Lease Agreement dated May 11, 2011, by and between Ellett Brothers, LLC (SC) and AGS Properties Corporation (14361 Commerce Way, Miami Lakes, FL 33016).
13. Lease Agreement dated March 2, 2011, by and between Douglas Officer Park, LLC and Ellett Brothers, LLC (SC) (formerly Ellett Brothers, Inc.) (5935 Granite Lake Drive, Granite Bay, CA 95746).

SCHEDULE 8.1.22

PENSION PLANS

NONE

SCHEDULE 8.1.24

LABOR CONTRACTS

NONE

SCHEDULE 8.1.28

DISREGARDED SUBSIDIARIES

Company	Jurisdiction of Incorporation / Formation
Archery Center International, Inc.	South Carolina
Leisure Sports Marketing Corporation	South Carolina
Quality Boxes, Inc.	South Carolina
Safesport Manufacturing Company	South Carolina
Willoughby & Taylor, LLC	Delaware

SCHEDULE 9.1.14

POST-CLOSING MATTERS

The Borrowers shall deliver, or cause to be delivered, to Agent or its designee each of the following documents, each in form and substance satisfactory to Agent:

1. Stock of Disregarded Subsidiaries. As soon as possible, but in any event within **30 days** after the Closing Date, First Priority Agent shall have received a stock certificate evidencing the Equity Interests in each Disregarded Subsidiary, together with an undated stock power for such certificate duly executed in blank by the pledgor thereof, unless Borrowers provide Agent with evidence reasonably satisfactory to it of the dissolution of such Disregarded Subsidiary prior to the end of such period.

2. Landlord Agreements. As soon as possible, but in any event within **120 days** after the Closing Date, Agent shall use commercially reasonable efforts to deliver, or cause to be delivered, to Agent fully executed Landlord Agreements or Warehouseman Waiver Agreements, as applicable, for the following locations:

- 801 Industrial Drive, City of Houston, Missouri 77011
- 100 – 124 Capital Road, Pittston, Pennsylvania 18640
- 4910 Longley Lane, Reno, Nevada 89502

3. Deposit Account Assignment. As soon as possible, but in any event within **120 days** after the Closing Date, Agent shall have received a fully executed Deposit Account Assignment with respect to the Deposit Account listed below:

<u>Bank</u>	<u>Account Nos.</u>
Wells Fargo Bank, National Association	2000037878724

SCHEDULE 9.2.3

EXISTING DEBT

NONE

SCHEDULE 9.2.5

PERMITTED LIENS

NONE

SCHEDULE 9.2.8

RESTRICTIONS ON UPSTREAM PAYMENTS

NONE

SCHEDULE 9.2.14

LEASES IN CONNECTION WITH THE ACQUISITION

1. Lease Agreement dated as of December 4, 2002, by and between KZK Associates, LLC and Bonitz Brothers, Inc. (Bonitz Brothers Lease - 931 Dana Drive, Harrisburg, PA 17109)
2. Lease Agreement dated as of July 11, 1996, by and between ECAL Associates, L.P. and Outdoor Sports, Inc. (Outdoor Sports Headquarters Lease - 967 Water Tower Lane, Dayton, Ohio 45449)
3. Lease Agreement dated as of November 15, 2004, as amended by a certain Addendum to Lease, dated March 15, 2005, as further amended by a certain Addendum to Lease, dated Dec. 14, 2007, by and between KZK Associates, LLC and Jerry's Sports, Inc. (Jerry's Sports Lease - 121 Main Street, Vandling, PA 18421)
4. Lease Agreement dated November 1, 2009 by and between Simmons Gun Specialties, Inc. (KS) and Simmons Gun Specialties, Inc. (DE.) for Real Estate and Improvements at 20241 West 207 Street, Spring Hill, KS 66063.
5. Lease Agreement dated November 1, 2009 by and between Jerry's Sports, Inc. (PA.) and Jerry's Sports, Inc. (DE.) for Real Estate and Improvements at 76 Stanwell Road, Newington, CT 06111.
6. Lease Agreement dated November 1, 2009 by and between Jerry's Sports, Inc. (PA.) and Jerry's Sports, Inc. (DE.) for Real Estate and Improvements at Route 247, Montdale, PA 18447.

FIRST AMENDMENT AND LIMITED CONSENT

This **FIRST AMENDMENT AND LIMITED CONSENT** (this “Agreement”), dated as of March 7, 2013, is made by and among Ellett Brothers, LLC, a South Carolina limited liability company (“EB”), Evans Sports, Inc., a South Carolina corporation (“Evans”), Jerry’s Sports, Inc., a Delaware corporation (“Jerry”), Simmons Gun Specialties, Inc. a Delaware corporation (“Simmons”), Bonitz Brothers, Inc., a Delaware corporation (“Bonitz”), Outdoor Sports Headquarters, Inc., a Delaware Corporation (“Outdoor” and, together with EB, Evans, Jerry, Simmons and Bonitz, each a “Borrower” and collectively, the “Borrowers”) each with its chief executive office and principal place of business at 267 Columbia Avenue, Chapin, South Carolina; the Lenders party hereto, and Prospect Capital Corporation, a Maryland corporation, in its capacity as collateral and administrative agent for the Lenders party thereto from time to time pursuant to Section 12 of the Loan Agreement (as defined below) (together with its successors in such capacity, “Agent”). Except as otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Loan Agreement (as defined below).

WHEREAS, reference is made to that certain Second Lien Loan and Security Agreement, dated as of September 28, 2012 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the “Existing Loan Agreement” and as amended by this Agreement and as further amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), by and among the Borrowers, the Lenders party thereto from time to time and the Agent;

WHEREAS, the Borrowers have requested that (a) Prospect agree to advance to the Borrowers an incremental term loan in an aggregate principal amount equal to \$60,000,000 (the “Incremental Term Loan”), the proceeds of which shall be used to make the Incremental Term Loan Funding Date Distribution and to pay fees and expenses relating thereto subject to the limits set forth herein, and (b) the Agent and Lenders agree to effect certain amendments to the Existing Loan Agreement and the other Loan Documents to reflect the terms of the Incremental Term Loan; and

WHEREAS, Prospect is willing to provide the requested Incremental Term Loan, and the Agent and the Lenders party hereto have agreed to make the requested amendments to the Existing Loan Agreement and the other Loan Documents and to provide the requested consent with respect to the Incremental Term Loan and the Incremental Term Loan Funding Date Distribution, in each case, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Limited Consent. Subject to the terms and conditions set forth in Section 3 below and in reliance upon the representations and warranties made by Borrowers in Section 4 below, each Lender party hereto and Agent hereby (i) consent to the incurrence by Borrowers of the Incremental Term Loan in an aggregate principal amount not exceeding \$60,000,000, (ii) consent to the making by the Borrowers of the Incremental Term Loan Funding Date Distribution as set forth herein, and (iii) waive the application of Section 4.3.9 of the Existing Loan Agreement with respect to the proceeds of the Incremental Term Loan (the “Limited Consent”).

2. Amendments. Subject to the terms and conditions set forth in Section 3 below and in reliance upon the representations and warranties made by Borrowers in Section 4 below, the Existing Loan Agreement is hereby amended as follows:

- A. Appendix A of the Existing Loan Agreement is hereby amended by inserting the following new definitions in the appropriate alphabetical order:

“Closing Date Term Loan – means a term loan in the aggregate principal amount of one-hundred and seventy million Dollars (\$170,000,000) provided to the Borrowers by the Lenders hereunder on the Closing Date.”

“Incremental Term Loan – means a term loan in the aggregate principal amount of sixty million Dollars (\$60,000,000) provided to Borrowers by Prospect hereunder on the Incremental Term Loan Funding Date.”

“Incremental Term Loan Funding Date – means March 7, 2013.”

“Incremental Term Loan Funding Date Distribution – the one-time cash Distribution by Borrowers to Holdings (for immediate further distribution to SportCo and Wellspring and the other shareholders of SportCo) on the Incremental Term Loan Funding Date in an amount up to (x) \$60,000,000, less (y) the fees and expenses incurred in connection with the negotiation, execution and delivery of the documents related to the Incremental Term Loan, the amount of which Distribution shall be excluded from all calculations of the Consolidated Fixed Charge Coverage Ratio.

- A. Appendix A of the Existing Loan Agreement is hereby amended by deleting subclause (viii)(A) of the definition of “Adjusted EBITDA” set forth therein in its entirety and, in lieu thereof, inserting the following:

“(A) the negotiation, execution and delivery of the Loan Documents and the First Priority Loan Documents, including amendments and other modifications thereof from time to time, and”

- B. Appendix A of the Existing Loan Agreement is hereby amended by deleting the text of the definition of “Original Lender” set forth therein in its entirety and, in lieu thereof, inserting the following:

“Original Lender – means (i) Prospect for so long as it owns and controls at least \$50,000,000 in principal amount of Term Loans made by it hereunder, and (ii) Summit for as long as it owns and controls at least fifty percent (50%) of (A) the Term Loans made by it hereunder, minus (B) any prepayments of principal amounts of such Term Loans.”

- C. Appendix A of the Existing Loan Agreement is hereby amended by deleting the text of the definition of “Prepayment Premium” set forth therein in its entirety and, in lieu thereof, inserting the following:

“Prepayment Premium – shall mean, without duplication, (i) with respect to any voluntary prepayment made pursuant to **Section 4.3.1** or **Section 4.3.2** other than in connection with an IPO, (x) if such prepayment is made after March 31, 2014 and on or prior to March 31, 2015, an amount equal to three percent (3.0%) of the principal balance of the Term Loans being prepaid, (y) if such prepayment is made after March 31, 2015 and on or prior to March 31, 2016, an amount equal to two percent (2.0%) of the principal balance of the Term Loans being prepaid, and (z) if such prepayment is made after March 31, 2016 and on or prior to March 31, 2017, an amount equal to one percent (1.0%) of the principal balance of the Term Loans being prepaid, and (ii) with respect to any voluntary prepayment made pursuant to **Section 4.3.1** or **Section 4.3.2** in connection with an IPO, or a mandatory prepayment made pursuant to **Section 4.3.4**, **Section**

4.3.5, Section 4.3.8 or Section 4.3.9, if such prepayment is made prior to March 31, 2017, an amount equal to one percent (1.0%) of the principal balance of the Term Loans being prepaid.

- D. Appendix A of the Existing Loan Agreement is hereby amended by deleting the text of the definition of “Term Loan” set forth therein in its entirety and, in lieu thereof, inserting the following:

“Term Loan shall mean the Closing Date Term Loan and the Incremental Term Loan.”

- E. Section 1.1.1 of the Existing Loan Agreement is hereby amended by deleting the first sentence thereof in its entirety and, in lieu thereof, inserting the following:

“Subject to the terms and conditions hereof and in reliance upon the representations and warranties set forth herein and in the other Loan Documents, (i) each Lender severally agrees to make available to Borrowers on the Closing Date, a principal amount equal to such Lender’s Commitment Percentage of the aggregate principal amount of the Closing Date Term Loan for the purposes hereinafter set forth and (ii) Prospect agrees to make available to Borrowers on the Incremental Term Loan Funding Date, a principal amount of the Incremental Term Loan in an original amount equal to \$60,000,000 for the purposes hereinafter set forth.”

- F. Section 1.1.3 of the Existing Loan Agreement is hereby amended by deleting the text set forth therein in its entirety and, in lieu thereof, inserting the following:

“1.1.3 Use of Proceeds. Proceeds of the Closing Date Term Loan shall be used by Borrowers solely for one or more of the following purposes: (i) to make a one-time Distribution to Holdings (for further Distribution to SportCo) to repay a portion of the Wellspring Debt on the Closing Date; (ii) to pay the Closing Date Distribution on the Closing Date, and (iii) to pay the fees and transaction expenses associated with the closing of the Transactions described herein. Proceeds of the Incremental Term Loan shall be used solely (a) to pay the Incremental Term Loan Funding Date Distribution on the Incremental Term Loan Funding Date and (b) to pay the fees and transaction expenses in connection with the Incremental Term Loan. In no event may any Term Loan proceeds be used by Borrowers to make a contribution to the equity of any Subsidiary which is not a Borrower, to purchase or to carry, or to reduce, retire or refinance any Debt incurred to purchase or carry any Margin Stock or for any related purpose that violates the provisions of Regulations T, U or X of the Board of Governors.”

- G. Section 2.1.1 of the Existing Loan Agreement is hereby amended by deleting the text thereof in its entirety and, in lieu thereof, inserting the following:

“2.1.1 Interest Rate. Subject to Section 2.1.3 and Section 2.7, interest shall accrue on the outstanding principal balance of the Closing Date Term Loans from the Closing Date and the Incremental Term Loans from the Incremental Term Loan Funding Date and until the principal amount of the Term Loans has been repaid in full at a rate per annum equal to the greater of (x) the LIBOR Rate plus eleven percent (11.00%) and (y) twelve and three-quarters percent (12.75%). Any determination of the interest rate by the Agent shall be conclusive and binding on the Borrowers in the absence of manifest error.

- H. Section 4.3.1 of the Existing Loan Agreement is hereby amended by deleting the text thereof in its entirety and, in lieu thereof, inserting the following:

“4.3.1 Prepayment in Full. On or after March 31, 2014, upon not less than ten (10) days’ prior written notice to the Agent and the Lenders, which notice shall be irrevocable and shall be delivered no later than 2:00 p.m. (New York City time), the Borrowers shall have the right to prepay the outstanding principal balance of the Term Loans in full, together with accrued but unpaid interest thereon and all other amounts then owing under the Loan Documents, plus the amount of any applicable Prepayment Premium.”

- I. Section 4.3.2 of the Existing Loan Agreement is hereby amended by deleting the text thereof in its entirety and, in lieu thereof, inserting the following:

“4.3.2 Partial Prepayments. On or after March 31, 2014, upon not less than ten (10) days’ prior written notice to the Agent and the Lenders, which notice shall be irrevocable and shall be delivered no later than 2:00 p.m. (New York City time), the Borrowers shall have the right to prepay a portion of the outstanding principal balance of the Term Loans, together with accrued but unpaid interest thereon and all other amounts then owing under the Loan Documents, plus the amount of any applicable Prepayment Premium; provided that each partial prepayment of the Term Loans shall be in a minimum principal amount of \$1,000,000 and integral multiples of \$500,000 in excess thereof.”

- J. Section 4.3.6 of the Existing Loan Agreement is hereby amended by inserting the following sentence immediately after the final sentence thereof:

“For the avoidance of doubt, except as expressly permitted pursuant to the provisions of this **Section 4.3**, no prepayment or repayment of the Term Loans shall be permitted at any time prior to April 1, 2014.”

- K. Section 9.2.4 of the Existing Loan Agreement is hereby amended by (i) deleting reference to “and” at the end of clause (v) and substituting therefor “,”, and (ii) deleting the “.” at the end of clause (vi) and inserting the following:

“, and (vii) payments to Wellspring in an aggregate amount of up to \$1,000,000 of past due fees and expenses incurred by Wellspring prior to the Closing Date and payable in accordance with the Expense Reimbursement Agreement.”

- L. Section 9.2.7 of the Existing Loan Agreement is hereby amended by deleting the text thereof in its entirety and, in lieu thereof, inserting the following:

“9.2.7 Distributions. Declare or make any Distributions, or set apart assets for a sinking or other analogous fund for the purpose of making Distributions, except for (i) Upstream Payments, (ii) the payment by EB to each of its members of income taxes then being assessed against such member on items of ordinary income and expense and net capital gain allocated to such member by EB in accordance with the terms of the operating agreement of EB, (iii) the Closing Date Distribution and the Distribution to Holdings (for further Distribution to SportCo) to repay the Wellspring Debt in full on the Closing Date, which Distributions under this subclause (iii) shall be excluded from all calculations of Consolidated Fixed Charge Coverage Ratio, and (iv) the Incremental Term Loan Funding Date Distribution, which Distribution under this subclause (iv) shall be excluded from all calculations of Consolidated Fixed Charge Coverage Ratio.”

- M. Section 10 of the Existing Loan Agreement is hereby amended by adding the following new Section 10.3 to the end thereof:

“Section 10.3 Conditions to Incremental Term Loan.”

The obligation of Prospect to make the Incremental Term Loan on the Incremental Term Loan Funding Date is subject to the satisfaction of the following conditions (and delivery to the Agent and the Lenders of a certificate of a knowledgeable Senior Officer of each Borrower certifying that such conditions have been satisfied and, as applicable, providing the relevant calculations or other evidence thereof):

10.3.1 Agent and Lenders shall have received a certificate setting forth the amendments to the Schedules to the Loan Agreement and the Pledge and Security Agreement that would be necessary to make the representations and warranties set forth therein true and correct in all respects on and as of the Incremental Term Loan Funding Date as if references to the “Closing Date” or “the date hereof” in such Loan Documents were deemed to refer to the Incremental Term Loan Funding Date;

10.3.2 The representations and warranties of any Obligor set forth in this Agreement and each other Loan Document shall be true and correct in all respects on and as of the Incremental Term Loan Funding Date (except to the extent that any such representation or warranty is expressly stated to have been made as of an earlier date, in which case, such representation or warranty shall be true and correct in all respects as of such earlier date);

10.3.3 At the time of and immediately after giving effect to the making of the Incremental Term Loan, no Default or Event of Default exists;

10.3.4 Agent and Lenders shall have received evidence satisfactory to them from one or more knowledgeable Senior Officers of each Borrower that, after giving effect to the Incremental Term Loan and Incremental Term Loan Funding Date Distribution, each Borrower is Solvent;

10.3.5 Agent and Lender shall have received certificates of existence for each Obligor, issued by the Secretary of State or other appropriate official of (a) such Obligor’s jurisdiction of organization, and (b) each jurisdiction where the conduct of such Obligor’s business activities or ownership of its Property necessitates qualification; provided, that to the extent the Borrower has used its commercially reasonable efforts to receive any certificate referenced in subsection (b) prior to the Incremental Term Loan Funding Date and has not received such certificate on or prior to the Incremental Term Loan Funding Date, then the Borrower shall provide such certificate within fifteen (15) days after the Incremental Term Loan Funding Date;

10.3.6 Agent shall have received copies of UCC Lien searches and other evidence in form and substance satisfactory to Agent and Lenders that there are no other Liens upon any Collateral except for Permitted Liens; and

10.3.7 Agent and Lenders shall have received a favorable, written opinion of (i) Paul, Weiss, Rifkind & Garrison LLP, as special counsel to the Obligors and (ii) Nelson Mullins Riley & Scarborough LLP, local counsel to Borrowers organized in South Carolina, each in form and substance satisfactory to Agent.

3. Conditions Precedent to Effectiveness. The effectiveness of this Agreement and the Limited Consent provided herein is subject to satisfaction of the following: (a) the Agent and the Lenders shall have received a duly executed counterpart hereof from each of the Borrowers dated as of the date hereof, (b) Prospect shall have received a duly executed counterpart of the Incremental Term Loan Fee Letter from EB dated as of the date hereof, and shall have received full payment of the fee due and owing thereunder, (c) Summit shall have received a duly executed counterpart of the Amendment Fee Letter from EB dated as of the date hereof, and shall have received full payment of the fee due and owing thereunder, (d) to the extent documented and invoiced, the Agent and the Lenders shall have received payment of all fees and expenses (including any fees and expenses of counsel to the Agent) due and owing to the Agent and the Lenders as of the date hereof in accordance with the Loan Agreement; (e) the Agent and the Lenders shall have received a duly executed counterpart of an amendment to the Subordination Agreement from the Borrowers and the Required Senior Creditors (as defined therein) dated as of the date hereof which shall include, among other things, an amendment to the definition of "Second Priority Cap Amount" set forth therein; (f) the Agent and the Lenders shall have received a duly executed counterpart of an amendment to the First Priority Loan Agreement from the Borrowers and the Required Lenders (as defined therein) dated as of the date hereof which shall include, among other things, an amendment to the definition of "Second Priority Debt" set forth therein; (g) the Agent shall have received duly executed Notes from the Borrowers evidencing the Incremental Term Loans; (h) the Agent shall have received copies of a written consent, resolution or other evidence of approval from the Governing Body of each Borrower with respect to this Agreement and the transactions contemplated hereby; and (i) the Agent shall have received such other documents, agreements or information as the Agent or any Lender may request with respect to any matter described herein, all in form and substance satisfactory to the Agent.

4. Representations and Warranties. Each of the Borrowers represents and warrants to each Lender and the Agent that, as of the date of this Agreement: (a) after giving effect to the amendments set forth in Section 2, no Default or Event of Default has occurred and is continuing under the Loan Agreement or any of the other Loan Documents; and (b) each of the Borrowers has the power and authority and has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

5. Acknowledgement of Obligations. The Borrowers and the Guarantors hereby acknowledge, confirm and agree that the aggregate outstanding principal amount of the Credit Party Obligations is \$170,000,000 as of the date hereof (prior to giving effect to the amendments set forth in Section 2).

6. Consent and Reaffirmation. Each Obligor hereby consents to the amendment of the Existing Loan Agreement effected hereby and confirms and agrees that, notwithstanding the effectiveness of this Agreement, each Loan Document to which such Obligor is a party is, and the obligations of such Obligor contained in the Loan Agreement, this Agreement or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended by this Agreement. For greater certainty and without limiting the foregoing, each Obligor hereby confirms that the existing security interests granted by such Obligor in favor of the Secured Parties pursuant to the Loan Documents in the Collateral described therein shall continue to secure the obligations of the Obligors under the Loan Agreement and the other Loan Documents as and to the extent provided in the Loan Documents.

7. Counterparts; Severability; Integration; Successors and Assigns. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, including facsimiles and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Any provision of this Agreement which is prohibited or unenforceable in any

jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Agreement represents the agreement of the Borrowers, the Agent and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Borrowers, the Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

8. Governing Law; Consent to Jurisdiction; WAIVER OF JURY TRIAL. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the law of the State of New York. Sections 14.20 and 14.21 of the Loan Agreement are hereby incorporated by reference as if fully stated herein, *mutatis mutandis*. THE BORROWERS, THE AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

9. Loan Document. This Agreement shall be deemed to be a Loan Document.

10. No Other Modification. The amendments set forth in Section 2 hereof and the Limited Consent herein provided are limited as specified and shall not constitute or be deemed to constitute an amendment, waiver or modification of, or consent to any deviation from, the terms and conditions of the Existing Loan Agreement, except as expressly set forth herein. Except as expressly set forth herein, the Existing Loan Agreement and each other Loan Document shall remain in full force and effect and is hereby confirmed and ratified in all respects, including with respect to any security interest or Lien granted to the Agent pursuant to the terms of the Loan Documents. Each Guarantor acknowledges and agrees that (a) notwithstanding the conditions to effectiveness set forth in this Agreement, the consent of such Guarantor to the amendments to the Existing Loan Agreement effected pursuant to this Agreement is not required for such effectiveness by the terms of the Loan Agreement or any other Loan Document, and (b) nothing in the Loan Agreement, this Agreement or any other Loan Document shall be deemed to require the consent of such Guarantor as a condition to the effectiveness to any future waivers, consents or amendments to the Existing Loan Agreement.

11. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent or any Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided in the Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

12. Fees and Expenses. The Credit Parties agree and acknowledge that all fees and expenses as described in Section 2.4 of the Loan Agreement incurred by the Agent and the Lenders, including, without limitation, those related to the preparation, arrangement, negotiation, documentation and administration of the transactions contemplated by this Agreement shall be for the account of the Borrowers.

13. Release. To the extent that any offsets, defenses or claims may exist arising out of or relating to this Agreement or any Loan Document against the Agent or any Lender or any of their respective subsidiaries, affiliates, officers, directors, employees, agents, attorneys, predecessors, successors or assigns whether asserted or unasserted, by execution of this Agreement, each Borrower, for

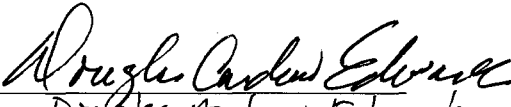
itself and its successors, assigns, parents, subsidiaries, affiliates, predecessors, employees, agents, heirs and executors, as applicable (collectively, the “Releasors”), jointly and severally with each other Borrower, releases, remises, acquits and forever discharges the Agent and each Lender and each of their respective subsidiaries, affiliates, officers, directors, employees, agents, attorneys, predecessors, successors and assigns, both present and former (collectively, the “Released Parties”) of and from any and all manner of actions, causes of action, torts, suits, debts, controversies, damages, judgments, executions, claims and demands whatsoever, asserted or unasserted, in law or in equity, that exist or have occurred on or prior to the date of this Agreement, arising out of or relating to this Agreement or any Loan Document which the Releasors ever had or now have against any of the Released Parties, including any presently existing claim whether or not presently suspected, contemplated or anticipated.

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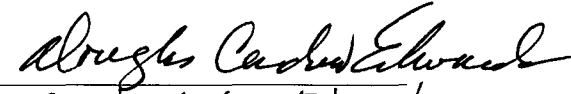
IN WITNESS WHEREOF, this Agreement has been duly executed on the day and year specified at the beginning of this Agreement.

BORROWERS:

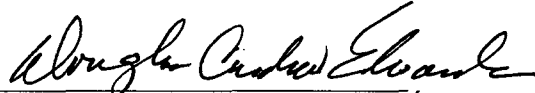
ELLET BROTHERS, LLC

By: 
Name: Douglas Andrew Edwards
Title: Vice President - Finance,
Secretary and Treasurer

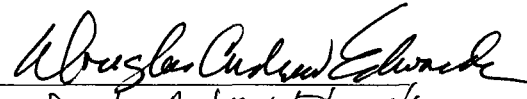
EVANS SPORTS, INC.

By: 
Name: Douglas Andrew Edwards
Title: Vice President - Finance,
Secretary and Treasurer

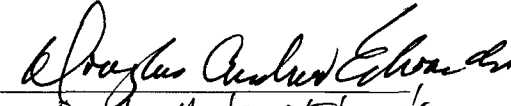
JERRY'S SPORTS, INC.

By: 
Name: Douglas Andrew Edwards
Title: Chief Financial Officer

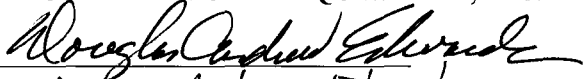
SIMMONS GUN SPECIALTIES, INC.

By: 
Name: Douglas Andrew Edwards
Title: Chief Financial Officer

BONITZ BROTHERS, INC.

By: 
Name: Douglas Andrew Edwards
Title: Chief Financial Officer

OUTDOOR SPORTS HEADQUARTERS, INC.

By: 

Name: Douglas Andrew Edwards

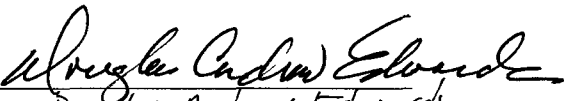
Title: Chief Financial Officer

GUARANTORS:

UNITED SPORTING COMPANIES, INC.

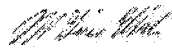
By: 
Name: Douglas Andrew Edwards
Title: Vice President - Finance,
Secretary and Treasurer

SPORTCO HOLDINGS, INC.

By: 
Name: Douglas Andrew Edwards
Title: Chief Financial Officer

AGENT:

PROSPECT CAPITAL CORPORATION

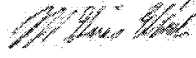
By:  _____

Name: M. Grier Eliasek

Title: President

LENDER:

PROSPECT CAPITAL CORPORATION

By:  _____

Name: M. Grier Eliasek

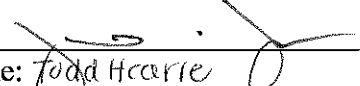
Title: President

LENDER:

SUMMIT PARTNERS CREDIT FUND, L.P.

By: Summit Partners Credit GP, L.P.
Its: General Partner

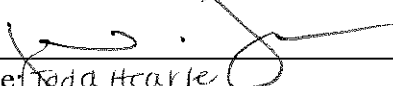
By: Summit Partners Credit GP, LLC
Its: General Partner

By: 
Name: Todd Harte
Title: Authorized Signatory

SUMMIT PARTNERS CREDIT FUND A-1, L.P.

By: Summit Partners Credit GP A-1, L.P.
Its: General Partner

By: Summit Partners Credit GP A-1, LLC
Its: General Partner

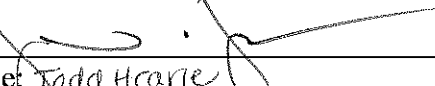
By: 
Name: Todd Harte
Title: Authorized Signatory

SUMMIT INVESTORS I, LLC

By: Summit Investors Management, LLC
Its: Manager

By: Summit Partners L.P.
Its: Manager

By: Summit Master Company LLC
Its: General Partner

By: 
Name: Todd Harte
Title: Authorized Signatory

LENDER:

SUMMIT INVESTORS I (UK), LLC

By: Summit Investors Management, LLC
Its: Manager

By: Summit Partners L.P.
Its: Manager

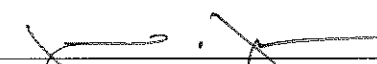
By: Summit Master Company LLC
Its: General Partner

By: 
Name: Todd Hearn
Title: Authorized Signatory

**SUMMIT PARTNERS CREDIT OFFSHORE
INTERMEDIATE FUND, L.P.**

By: Summit Partners Credit GP, L.P.
Its: General Partner

By: Summit Partners Credit GP, LLC
Its: General Partner

By: 
Name: Todd Hearn
Title: Authorized Signatory

SECOND AMENDMENT

This **SECOND AMENDMENT** (this "Agreement"), dated as of September 30, 2014, is made by and among Ellett Brothers, LLC, a South Carolina limited liability company ("EB"), Evans Sports, Inc., a South Carolina corporation ("Evans"), Jerry's Sports, Inc., a Delaware corporation ("Jerry"), Simmons Gun Specialties, Inc. a Delaware corporation ("Simmons"), Bonitz Brothers, Inc., a Delaware corporation ("Bonitz"), Outdoor Sports Headquarters, Inc., a Delaware Corporation ("Outdoor" and, together with EB, Evans, Jerry, Simmons and Bonitz, each a "Borrower" and collectively, the "Borrowers") each with its chief executive office and principal place of business at 267 Columbia Avenue, Chapin, South Carolina; the Lenders party hereto, and Prospect Capital Corporation, a Maryland corporation, in its capacity as collateral and administrative agent for the Lenders party thereto from time to time pursuant to Section 12 of the Loan Agreement (as defined below) (together with its successors in such capacity, "Agent"). Except as otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Loan Agreement (as defined below).

WHEREAS, reference is made to that certain Second Lien Loan and Security Agreement, dated as of September 28, 2012 (as previously amended by that certain First Amendment and Limited Consent dated as of March 7, 2013 and as further amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Loan Agreement" and as amended by this Agreement and as further amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and among the Borrowers, the Lenders party thereto from time to time and the Agent;

WHEREAS, the Borrowers have requested an amendment to and under the Existing Loan Agreement as more particularly described herein; and

WHEREAS, the Lenders are willing to consent to such request and have agreed to make such amendment to and under the Existing Loan Agreement as provided herein, in each case, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments to Existing Loan Agreement. Subject to and in accordance with the terms and conditions set forth herein, the Existing Loan Agreement is hereby amended as follows:

- (a) Schedule 9.2.14 of the Existing Loan Agreement is hereby amended and restated in its entirety to read as set forth in Exhibit A hereto, which amendment shall be deemed to be retroactive to the Closing Date.
- (b) Section 14.20 of the Existing Loan Agreement is hereby amended and restated in its entirety to read as follows:

"14.20 Governing Law; Jurisdiction; Dispute Resolution; Etc.

14.20.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York and the validity, interpretation, construction, and performance hereof shall be governed by and construed and enforced in accordance with, and any claim by any party hereto against any other party hereto (including any claims sounding in contract or tort law arising out of the subject matter hereof and any determinations with respect to

post-judgment interest) shall be determined in accordance with, the internal laws of the State of New York for contracts made and to be performed wholly within the State of New York (excluding the laws applicable to conflicts or choice of law that would require the application of the law of any other jurisdiction).

14.20.2 Submission to Jurisdiction. Each Borrower irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, New York, New York and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York state court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Borrower or its properties in the courts of any jurisdiction.

14.20.3 Waiver of Venue. Each Borrower irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Subsection 14.20.2. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each Borrower irrevocably waives, to the fullest extent permitted by Applicable Law, any right to bring any action or proceeding against (a) the Agent in any court outside the Borough of Manhattan, New York, New York, or (b) any other Lender other than a state within the United States designated by such Lender.

14.20.4 Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 14.9. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

14.20.5 No provision of, nor the exercise of any rights under, Section 14.20.2 or Section 14.20.3 above shall limit the right of the Agent or any Lender (i) to foreclose against any real or personal property collateral through judicial foreclosure, by the exercise of a power of sale under a deed of trust, mortgage or other security agreement or instrument, pursuant to applicable provisions of the UCC, or otherwise pursuant to Applicable Law, (ii) to exercise self-help remedies including but not limited to set-off and repossession, or (ii) to request and obtain from a court having jurisdiction before, during or after the pendency of any arbitration provisional or ancillary remedies and relief including but not limited to injunctive or mandatory relief or the appointment of a receiver. The institution and maintenance of an action or judicial proceeding for, or pursuit of, provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of any rights of the Agent, even if the Agent would otherwise have such right."

2. Effectiveness. The effectiveness of Section 1 of this Agreement is subject to satisfaction of the following: (a) the Agent and the Lenders shall have received a duly executed counterpart hereof from each of the Borrowers dated as of the date hereof and (b) to the extent documented and invoiced, the

Agent and the Lenders shall have received payment of all fees and expenses (including any fees and expenses of counsel to the Agent) due and owing to the Agent and the Lenders as of the date hereof in accordance with the Loan Agreement.

3. Representations and Warranties. Each of the Borrowers represents and warrants to each Lender and the Agent that, as of the date of this Agreement: (a) after giving effect to the amendments set forth in Section 1, no Default or Event of Default has occurred and is continuing under the Loan Agreement or any of the other Loan Documents; and (b) each of the Borrowers has the power and authority and has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

4. Acknowledgement of Obligations. The Borrowers and the Guarantors hereby acknowledge, confirm and agree that the aggregate outstanding principal amount of the Credit Party Obligations is \$230,000,000.00 as of the date hereof.

5. Consent and Reaffirmation. Each Obligor hereby consents to the amendments of the Existing Loan Agreement effected hereby and confirms and agrees that, notwithstanding the effectiveness of this Agreement, each Loan Document to which such Obligor is a party is, and the obligations of such Obligor contained in the Loan Agreement, this Agreement or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended by this Agreement. For greater certainty and without limiting the foregoing, each Obligor hereby confirms that the existing security interests granted by such Obligor in favor of the Secured Parties pursuant to the Loan Documents in the Collateral described therein shall continue to secure the obligations of the Obligors under the Loan Agreement and the other Loan Documents as and to the extent provided in the Loan Documents.

6. Counterparts; Severability; Integration; Successors and Assigns. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, including facsimiles and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Agreement represents the agreement of the Borrowers, the Agent and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Borrowers, the Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

7. Governing Law; Consent to Jurisdiction; WAIVER OF JURY TRIAL. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the law of the State of New York. Sections 14.20 and 14.21 of the Loan Agreement, as amended hereby, are hereby incorporated by reference as if fully stated herein, *mutatis mutandis*. THE BORROWERS, THE AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

8. Loan Document. This Agreement shall be deemed to be a Loan Document.

9. No Other Modification. The amendments set forth in Section 1 hereof shall not constitute or be deemed to constitute an amendment, waiver or modification of, or consent to any deviation from, the terms and conditions of the Existing Loan Agreement, except as expressly set forth herein. Except as expressly set forth herein, the Existing Loan Agreement and each other Loan Document shall remain in full force and effect and is hereby confirmed and ratified in all respects, including with respect to any security interest or Lien granted to the Agent pursuant to the terms of the Loan Documents. Each Guarantor acknowledges and agrees that (a) notwithstanding the conditions to effectiveness set forth in this Agreement, the consent of such Guarantor to the amendments to the Existing Loan Agreement effected pursuant to this Agreement is not required for such effectiveness by the terms of the Loan Agreement or any other Loan Document, and (b) nothing in the Loan Agreement, this Agreement or any other Loan Document shall be deemed to require the consent of such Guarantor as a condition to the effectiveness to any future waivers, consents or amendments to the Existing Loan Agreement.

10. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Agent or any Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided in the Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

11. Fees and Expenses. The Credit Parties agree and acknowledge that all fees and expenses as described in Section 2.4 of the Loan Agreement incurred by the Agent and the Lenders, including, without limitation, those related to the preparation, arrangement, negotiation, documentation and administration of the transactions contemplated by this Agreement shall be for the account of the Borrowers.

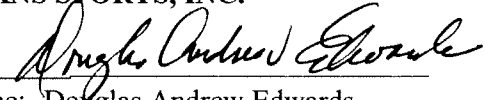
12. Release. To the extent that any offsets, defenses or claims may exist arising out of or relating to this Agreement or any Loan Document against the Agent or any Lender or any of their respective subsidiaries, affiliates, officers, directors, employees, agents, attorneys, predecessors, successors or assigns whether asserted or unasserted, by execution of this Agreement, each Borrower, for itself and its successors, assigns, parents, subsidiaries, affiliates, predecessors, employees, agents, heirs and executors, as applicable (collectively, the "Releasors"), jointly and severally with each other Borrower, releases, remises, acquits and forever discharges the Agent and each Lender and each of their respective subsidiaries, affiliates, officers, directors, employees, agents, attorneys, predecessors, successors and assigns, both present and former (collectively, the "Released Parties") of and from any and all manner of actions, causes of action, torts, suits, debts, controversies, damages, judgments, executions, claims and demands whatsoever, asserted or unasserted, in law or in equity, that exist or have occurred on or prior to the date of this Agreement, arising out of or relating to this Agreement or any Loan Document which the Releasors ever had or now have against any of the Released Parties, including any presently existing claim whether or not presently suspected, contemplated or anticipated.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Agreement has been duly executed on the day and year specified at the beginning of this Agreement.

BORROWERS:

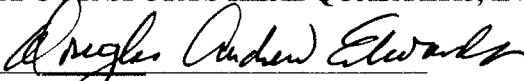
**ELLETT BROTHERS, LLC
EVANS SPORTS, INC.**

By 

Name: Douglas Andrew Edwards

Title: Vice President, Chief Financial Officer and
Treasurer

**JERRY'S SPORTS, INC.
SIMMONS GUN SPECIALTIES, INC.
BONITZ BROTHERS, INC.
OUTDOOR SPORTS HEADQUARTERS, INC.**

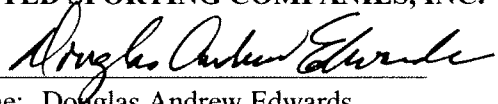
By 

Name: Douglas Andrew Edwards

Title: Vice President, Chief Financial Officer and
Treasurer

GUARANTORS:

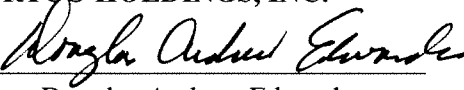
UNITED SPORTING COMPANIES, INC.

By 

Name: Douglas Andrew Edwards

Title: Vice President, Chief Financial Officer
and Treasurer

SPORTCO HOLDINGS, INC.

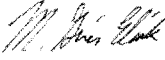
By 

Name: Douglas Andrew Edwards

Title: Chief Financial Officer

AGENT:

PROSPECT CAPITAL CORPORATION

By 

Name: Grier Eliasek

Title: President and Chief Operating Officer

LENDER:

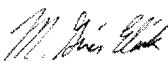
PROSPECT CAPITAL CORPORATION

By 

Name: Grier Eliasek

Title: President and Chief Operating Officer

PROSPECT CAPITAL FUNDING LLC

By 

Name: Grier Eliasek

Title: Vice President

LENDER:

SUMMIT PARTNERS CREDIT FUND, L.P.

By: Summit Partners Credit GP, L.P.

Its: General Partner

By

Name: Todd Hearle

Title: Authorized Signatory

SUMMIT PARTNERS CREDIT FUND A-1, L.P.

By: Summit Partners Credit GP A-1, L.P.

Its: General Partner

By

Name: Todd Hearle

Title: Authorized Signatory

SUMMIT INVESTORS I, LLC

By: Summit Investors Management, LLC

Its: Manager

By

Name: Todd Hearle

Title: Authorized Signatory

LENDER:

SUMMIT INVESTORS I (UK), L.P.

By: Summit Investors Management, LLC

Its: General Partner

By

Name: Todd Hearle

Title: Authorized Signatory

**SUMMIT PARTNERS CREDIT OFFSHORE
INTERMEDIATE FUND, L.P.**

By: Summit Partners Credit GP, L.P.

Its: General Partner

By

Name: Todd Hearle

Title: Authorized Signatory

SCHEDULE 9.2.14

PERMITTED LEASES

1. Lease Agreement dated as of December 4, 2002, by and between KZK Associates, LLC and Bonitz Brothers, Inc. (Bonitz Brothers Lease - 931 Dana Drive, Harrisburg, PA 17109).
2. Lease Agreement dated as of July 11, 1996, by and between ECAL Associates, L.P. and Outdoor Sports, Inc. (Outdoor Sports Headquarters Lease - 967 Water Tower Lane, Dayton, Ohio 45449).
3. Lease Agreement dated as of November 15, 2004, as amended by a certain Addendum to Lease, dated March 15, 2005, as further amended by a certain Addendum to Lease, dated Dec. 14, 2007, by and between KZK Associates, LLC and Jerry's Sports, Inc. (Jerry's Sports Lease - 121 Main Street, Vandling, PA 18421).
4. Lease Agreement dated November 1, 2009 by and between Simmons Gun Specialties, Inc. (KS) and Simmons Gun Specialties, Inc. (DE.) for Real Estate and Improvements at 20241 West 207 Street, Spring Hill, KS 66063.
5. Lease Agreement dated November 1, 2009 by and between Jerry's Sports, Inc. (PA.) and Jerry's Sports, Inc. (DE.) for Real Estate and Improvements at 76 Stanwell Road, Newington, CT 06111.
6. Lease Agreement dated November 1, 2009 by and between Jerry's Sports, Inc. (PA.) and Jerry's Sports, Inc. (DE.) for Real Estate and Improvements at Route 247, Montdale, PA 18447.
7. Lease Agreement dated January 21, 2011, by and between Mericle 100 Capital, LLC (PA) and United Sporting Companies (DE) for real estate and improvements at 100 Capital Road, CenterPoint Commerce & Trade Park East, Jenkins Township, Luzerne County, PA.
8. Fulfillment Services Agreement dated December 29, 2010 and amended August 22, 2013, by and between Innotrac Corporation (GA) and United Sporting Companies (DE) for fulfillment services including dedicated space and warehouse storage at 4910 Longley Lane, Suites 101 (administrative office) and 102 (warehouse), Reno, NV.