

# **EXHIBIT A**

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SECURED SUPER-PRIORITY CREDIT AGREEMENT

dated as of March ~~1~~5, 2010

among

The Bankruptcy Estates of The SCO Group, Inc., a Delaware corporation and SCO Operations, Inc., a Delaware corporation, by and through Edward N. Cahn solely in his capacity as Chapter 11 Trustee,

as Borrower

and

Seung Ni Capital Partners, L.L.C., a Delaware limited liability company,

as Lender

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SECURED SUPER-PRIORITY CREDIT AGREEMENT (this “Agreement”), dated as of March [5,], 2010 (the “Effective Date”), by and between the Bankruptcy Estates of The SCO Group, Inc., a Delaware corporation (“SCO Group”), and SCO Operations, Inc., a Delaware corporation (“SCO Operations”) (SCO Group and SCO Operations are sometimes collectively referred to herein as “SCO”), by and through Edward N. Cahn, solely in his capacity as Chapter 11 trustee for the Bankruptcy Estates of SCO (“Trustee” or “Borrower”), and Seung Ni Capital Partners, L.L.C., a Delaware limited liability company, as Lender. This Agreement is executed in connection with the following facts:

RECITALS:

A. On September 14, 2007 (the “Petition Date”), SCO Group filed a voluntary petition for relief as Case No. 07-11337 (KG) and SCO Operations filed a voluntary petition for relief as Case No. 07-11338 (KG) (collectively, the “Bankruptcy Case”) under chapter 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

B. On August 25, 2009, the Bankruptcy Court appointed the Honorable Edward N. Cahn, retired, as Chapter 11 trustee, to operate SCO’s business and manage SCO’s property;

C. The Borrower has requested that the Lender provide a portion of secured super-priority credit facility in a maximum amount up to \$2,000,000.00 in order to fund the administrative costs of the Bankruptcy Case, including, without limitation, the payment of certain litigation costs;

D. The Lender is willing to make available to the Borrower such post-petition loan upon the terms and subject to the conditions set forth herein;

E. Other Lenders shall provide the remaining portions of such secured super-priority credit facility by entering into duplicate but separate versions of this Agreement with the Borrower; and

F. The Lender shall act as collateral Agent for all of the Lenders pursuant to the terms of the Collateral Agent Agreement.

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

ARTICLE I

DEFINITIONS

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Affiliate” means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is

under common Control with the Person specified; provided, however, that, for purposes of Section 6.07, the term “Affiliate” shall also include any Person that directly or indirectly owns 10% or more of any class of Equity Interests of the Person specified or that is an officer or director of the Person specified.

“Agent” means Seung Ni Capital Partners, L.L.C., a Delaware limited liability company, acting as collateral agent on its own behalf and on behalf of the other Lenders pursuant to the terms of the Collateral Agent Agreement attached hereto as Exhibit “A”.

“Agreement” means this Agreement, as that term is defined in the preamble hereto.

“Applicable Law” means, with respect to any Person, the common law and all federal, state, local and foreign laws, rules, regulations, orders, judgments, decrees and other legal requirements or determinations of any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Bankruptcy Case” has the meaning assigned to such term in the recitals hereto.

“Bankruptcy Code” has the meaning assigned to such term in the recitals hereto.

“Bankruptcy Court” has the meaning assigned to such term in the recitals to this Agreement; provided, however, that “Bankruptcy Court” shall also mean any other court of competent jurisdiction over the Bankruptcy Case.

“Basic Interest” means interest accruing at the annual rate of fourteen percent (14%) per annum, compounded quarterly, as set forth in the Note and on the amount of the Indebtedness set forth in the Note.

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

“Capital Expenditures” means, for any period and with respect to any Person, all expenditures for the acquisition or leasing of fixed or capital assets or additions to equipment during such period by such Person that would be classified as capital expenditures in accordance with GAAP, but excluding any such expenditure made: (a) to restore, replace or rebuild property to the condition of such property immediately prior to any damage, loss, destruction or condemnation of such property, to the extent such expenditure is made with insurance proceeds, condemnation awards or indemnification or damage recovery proceeds relating to any such damage, loss, destruction or condemnation; or (b) with proceeds from the sale or exchange of property to the extent utilized to purchase functionally equivalent property or equipment.

“Claims” means claims, actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, agreements, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, costs, expenses or any other claims whatsoever (including, without limitation, cross-claims, counterclaims, rights of set-off and recoupment).

“Closing Date” means the date that is one (1) Business Day after the date on which the Order is issued by the Bankruptcy Court and on which the Lender shall disburse its portion of the Loan to the Borrower, but in no event shall the Closing Date occur after March 8, 2010.

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

“Collateral” means all collateral and security identified on Exhibit “CB” hereto and as described in any Security Document and specifically excludes all claims and causes of action of the Estates under Chapter 5 of the Bankruptcy Code.

“Collateral Agent Agreement” means that certain Collateral Agent Agreement attached hereto as Exhibit “A” under which Agent shall act as collateral agent for all Lenders with respect to any and all Lenders’ rights in and to the Collateral.

“Commitment” means the Lender’s agreement to make a portion of the Loan, the amount of which is more particularly set forth on Exhibit “A” to the Note, as such portion of the amount of the Loan may be reduced from time to time pursuant to Section 2.06 hereof. The maximum amount of the Loan from all Lenders, including the Lender, shall not exceed Two Million and 00/100 Dollars (\$2,000,000.00), the actual and exact amount of which shall be equal to the aggregate amount of the aggregate Loan funds actually disbursed by the Lender hereunder and by the other Lenders under duplicate originals of this Agreement between such Lenders and Borrower.

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

“Core Asset Sale” means the sale, license, transfer or other disposition (by way of merger, casualty, condemnation or otherwise) by the Borrower to any Person (other than the Borrower) of any SCO assets other than Borrower’s rights in the Litigation and the Litigation Proceeds and other than SCO’s Non-Core Assets, as defined herein.

“Credit Event” has the meaning assigned to such term in Section 4.01.

“Default” means any event or condition which upon notice, lapse of time or both would constitute an Event of Default.

“Debtors” shall mean The SCO Group, Inc. and SCO Operations, Inc.

“Dollars” or “\$” means lawful money of the United States of America.

“Effective Date” is the date first set forth above on this Agreement.

“Entry Date” means the date of the entry of the Order.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in

any Person, or any obligations convertible into or exchangeable for, or giving any Person a right, option or warrant to acquire such equity interests or such convertible or exchangeable obligations.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means: (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrance by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal of the Borrower or any of its ERISA Affiliates from any Plan; (e) the receipt by the Borrower or any of its ERISA Affiliates from a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the adoption of any amendment to a Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (g) the occurrence of a “prohibited transaction” with respect to which the Borrower is a “disqualified person” (within the meaning of Section 4975 of the Code) or with respect to which the Borrower could otherwise be liable; or (h) occurrence of any substantially similar event identified in (a) through (g) above as determined by Lender in its reasonable discretion with respect to a Foreign Plan.

“Estate” means, collectively, the bankruptcy estates of The SCO Group, Inc., and of SCO Operations, Inc., as defined by § 541 of the Bankruptcy Code.

“Event of Default” has the meaning assigned to such term in Article VII.

“Facility” means the credit facility comprising the Loan made to the Borrower in accordance with Section 2.01 and 2.02(a) hereof.

“Foreign Plan” means a non-governmental employee benefit plan sponsored or maintained by, or contributed to, by Borrower or any of its Affiliates under the laws of a jurisdiction outside the United States for the benefit of its employees or the employees of any of its Affiliates.

“GAAP” means ~~United States generally accepted~~prudent and reasonable accounting principles applied on a consistent basis.

“Governmental Authority” means any federal, state, local, or foreign court or governmental agency, authority, instrumentality, or regulatory body.

“Indebtedness” of any Person means, without duplication: (a) all obligations of such Person for borrowed money, including the Loan evidenced by the Note; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person; (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business); (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; (f) all guarantees by such Person of Indebtedness of others; (g) all obligations of such Person as an account party in respect of letters of credit; and (h) all obligations of such Person as an account party in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, except to the extent that, by its terms, such Indebtedness is non-recourse to such Person.

“Intellectual Property” means: (a) all right, title and interest of Borrower in and to patent applications and patents, including, without limitation, all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world, and all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof (collectively, the “Patents”); (b) all right, title and interest of Borrower in and to trademark applications and trademarks, including, without limitation, all renewals thereof, all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, and all rights corresponding thereto throughout the world (collectively, the “Trademarks”), and the good will of the business to which each of the Trademarks relates; (c) all copyrights of Borrower and all rights and interests of every kind of Borrower in copyrights and works protectible by copyright, and all renewals and extensions thereof, and in and to the copyrights and rights and interests of every kind or nature in and to all works based upon, incorporated in, derived from, incorporating or relating to any of the foregoing or from which any of the foregoing is derived, and all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, and all rights corresponding thereto throughout the world (collectively, the “Copyrights”); (d) all of Borrower’s trade secrets and other proprietary information, and all proceeds thereof (collectively, the “Trade Secrets”); (e) all right, title, and interest of Borrower in, to and under license agreements and contracts concerning Patents, Trademarks, Copyrights, and Trade Secrets, all amendments, modifications, and replacements thereof, all royalties and other amounts owing thereunder, and all proceeds thereof (collectively, the “Licenses”); and (e) All internet domain names and addresses of Borrower and all proceeds thereof.

“Lender” means Seung Ni Capital Partners, L.L.C., a Delaware limited liability company;

“Lenders” means the Lender and each additional Person that enters into a duplicate original of this Agreement and under which such additional Person agrees to make some portion of the Loan to Borrower thereunder, and such additional Person’s successors and assigns.

“Lien” means, with respect to any asset: (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset; and (b) the interest of a vendor or a lessor under any conditional sale agreement, title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Litigation” means the following two (2) pending cases:

1. The SCO Group, Inc., by and through Edward N. Cahn, chapter 11 Trustee, v. Novell, Inc., Case No. 2:04cv00139, pending in the United States District Court for the District of Utah.
2. The SCO Group, Inc. v. International Business Machines Corporation., Case No. 2:03cv00294, pending in the United States District Court for the District of Utah.

“Litigation Proceeds” means with respect to the Litigation: (a) the entire amount(s) of any final, non-appealable verdict and/or arbitration or mediation award(s) received by the SCO Estates; (b) any amounts agreed to in any settlement and received by the SCO Estates; (c) any attorney fees and costs incurred and ordered or agreed to be paid by the other party(ies) to the Litigation; (d) all of the foregoing described amounts arising in any further litigation involving IBM, Novell, Red Hat, and/or Daimler Chrysler and SCO with respect to the same or similar substantive claims involved in the Litigation and received by the SCO Estates; (e) all pre-judgment and post-judgment interest received by the SCO Estates relating to any and all of the foregoing; and/or (f) all proceeds from the sale of some or all of the assets or the shares of either or both of the Debtors and their respective Affiliates in the event such sale occurs in connection with the settlement of the Litigation.

“Loan” means a loan in an amount not to exceed Two Million and 00/100 Dollars (~~\$2,00,000.00~~ 2,000,000.00). The Lender has agreed hereunder to make a portion of the Loan, the exact amount of which is set forth on Exhibit “A” to the Note.

“Loan Documents” means this Agreement, the Note, the Security Documents, and any other documents executed in connection with any of the foregoing.

“Loan Fee” means that portion of the Litigation Proceeds payable from the Borrower to the Lenders in accordance with the Note and calculated by multiplying six and six-tenths percent (6.60%) times the following two numbers: (a) a fraction, the numerator of which is the actual amount of the Loan disbursed by all of the Lenders to the Borrower under this Agreement and duplicate originals of this Agreement executed by Lenders other than the Lender, and the denominator of which shall be \$2,000,000.00; and (b) the actual amount of the gross Litigation Proceeds. By way of example, if the Loan disbursed by all Lenders to Borrower were \$1,500,000.00 and if the gross Litigation Proceeds are \$25,000,000.00, then the Loan Fee would be \$1,237,500.00 ( $.066 \times 1,500,000/2,000,000 \times 25,000,000$ ). The Borrower’s obligation to pay the Loan Fee is a material inducement to the Lender’s willingness to enter into this Agreement and to make the Loan. The Lender shall be entitled to its proportionate share of the Litigation Proceeds in accordance with the Note.

“Loan Fee Maturity Date” means the date that is ten (10) calendar days after the date on which the Litigation Proceeds become available to the Borrower.

“Loan Termination Date” means the earlier to occur of: (a) the date on which the Commitment is permanently reduced to zero pursuant to Section 2.06; and (b) the date that is five (5) days after the Closing Date.

“Material Adverse Effect” means: (a) an adverse effect on the business, assets, operations, or condition (financial or otherwise) of the Borrower; (b) an impairment of the ability of the Borrower, to perform any of its obligations under any Loan Document to which it is or will be a party; or (c) an impairment of the rights of or benefits available to the Lender under any Loan Document; provided, however, that: (i) the filing of the Bankruptcy Case and the consequences that customarily result from reorganization under chapter 11 of the Bankruptcy Code; (ii) the entry into this Agreement or the public announcement thereof; and (iii) changes in general economic conditions, financial markets or conditions generally affecting the business of the Borrower, to the extent the business of the Borrower is not disproportionately affected by such changes, shall not be considered in determining whether there has been a “Material Adverse Effect;” or (c) an adverse effect affecting a material portion of the Collateral.

“Material Indebtedness” means any and all Indebtedness (other than the Loan), of the Borrower in an aggregate principal amount exceeding \$25,000.00.

“Maturity Date” means, with respect to the payment of the principal, Basic Interest and all other amounts due under the Note, the earliest to occur of the following: (a) October 31, 2011; (b) the date of acceleration of any outstanding portion of the Facility; (c) conversion of any of the Borrower’s Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code (“Chapter 7”), unless otherwise consented to in writing by the Lender; (d) dismissal either or both of the cases constituting the Bankruptcy Case, unless otherwise consented to in writing by the Lender; and (e) confirmation of the Plan of Reorganization or liquidation, except to the extent that the proposed treatment of the Loan in the Plan or Reorganization is acceptable to Lender.

“Non-Core Assets” means SCO’s excess equipment and other miscellaneous assets in storage (truck, forklifts and excess office equipment), the Java Patent, more particularly described and known as US Patent No. 6,931,544, and assets related to SCO’s mobility business.

“Note” means that certain Secured Super-Priority Promissory Note, of even date with this Agreement, in the original principal amount of up to \$2,000,000.00, which is attached hereto as Exhibit “ED.” The principal, the Basic Interest and all other amounts (other than the Loan Fee) shall be due and payable in full on the Maturity Date, and the Loan Fee shall be due and payable in full on the Loan Fee Maturity Date.

“Obligations” means all obligations, covenants, and requirements of Borrower contained in the Note and the Security Documents, including, without limitation, Borrower’s obligation set forth herein and in the Note to repay the Loan.

“Order” means an order of the Bankruptcy Court pursuant to Section 364 of the Bankruptcy Code, in form and substance satisfactory to the Lender, approving this Agreement and the other Loan Documents, authorizing the incurrence by the Borrower of permanent post-petition secured and super-priority Indebtedness in accordance with this Agreement and the other

Loan Documents, as to which no stay has been entered and that has not been reversed, modified, vacated or overturned.

“Other Taxes” means any and 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.

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

“Petition Date” has the meaning assigned to such term in the recitals to this Agreement.

“Plan” means any employee pension benefit plan subject to the provisions of ERISA or Section 412 of the Code or Section 307 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan of Reorganization” means that certain plan of reorganization or liquidation to be filed with the Bankruptcy Court in form and substance reasonably satisfactory to the Lender, and with such amendments as may be approved by the Lender (such approval not to be unreasonably withheld); provided, however, that if the Loan hereunder is repaid in full prior to or in connection with the filing of the Plan of Reorganization, Lender shall have no right to review or approve such Plan of Reorganization prior to filing.

“Related Lender Party” means, with respect to any specified Person, any Affiliate and the respective directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Requisite Priority” means the following: (a) pursuant to Bankruptcy Code §364(c)(2), a first priority, perfected Lien upon the Borrower’s right, title and interest in, to and under the Collateral; and (b) pursuant to §364(c)(1) a super-priority administrative expense with priority over any or all administrative expenses of the kind specified in §503(b) or §507(b).

“Restricted Payment” means any dividend, interest, or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower.

“Security Documents” means those security agreements and other instruments and documents executed and delivered pursuant to the foregoing or pursuant to Section 5.07 and attached hereto as Exhibit “E.”

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, joint venture or other legal entity of any kind of which such Person (either alone or through or together with one or more of its other Subsidiaries), owns, directly or

indirectly, more than fifty percent (50%) of the capital stock or other equity interests the holders of which are: (a) generally entitled to vote for the election of the board of directors or other governing body of such legal entity; or (b) generally entitled to share in the profits or capital of such legal entity

“Taxes” means any and all present or future taxes, or other levies, imposts, duties, deductions, charges, liabilities, or withholdings in the nature of a tax imposed by any Governmental Authority.

“Transactions” means, collectively: (a) the filing of the Bankruptcy Case; (b) the execution and delivery of this Agreement; (c) the borrowing of the Loan hereunder; and (d) the payment of related fees and expenses.

“Trustee” means Edward N. Cahn, solely in his capacity as trustee for the Estate of both Debtors.

“Voluntary Prepayment” means a prepayment of principal of Loan pursuant to Section 2.08 in any year to the extent that such prepayment reduces the principal due in respect of the Loan on the Maturity Date.

“Wholly Owned Subsidiary” of any Person means a Subsidiary of such Person of which securities (except for directors’ qualifying shares) or other ownership interests representing 100% of the Equity Interests are, at the time any determination is being made, owned, controlled, or held by such Person or one or more wholly owned Subsidiaries of such Person or by such Person and one or more wholly owned Subsidiaries of such Person.

SECTION 1.02. Terms Generally. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”; and the words “asset” and “property” shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein: (a) any reference in this Agreement to any document means such document as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and of this Agreement; and (b) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided, however, that if the Borrower notifies the Lender that the Borrower wishes to amend any covenant in Article VI or any related definition to eliminate the effect of any change in GAAP occurring after the Closing Date on the operation of such covenant (or if the Lender notifies the Borrower that the Lender wishes to amend Article VI or any related definition for such purpose), then the Borrower’s compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Lender.

## ARTICLE II

### THE CREDITS

SECTION 2.01. Commitment. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, the Lender agrees to make a portion of a loan to the Borrower on the Closing Date in the amount of that portion of the Loan Amount (the "Loan") set forth on Exhibit "A" to the Note. The total amount of such loan, including the Lender's portion thereof made hereunder, shall be defined here as the "Loan" for all purposes under this Agreement and the other Loan Documents. The total amount of the Loan shall be equal to the amount of Loan proceeds disbursed to the Borrower hereunder by the Lender and under duplicate originals of this Agreement by the other Lenders. Notwithstanding the foregoing, prior to and after the Entry Date of the Order, the aggregate principal amount of Loan from all Lenders and outstanding at any time shall not be less than Eight Hundred Thousand and 00/100 Dollars (\$800,000.00) and shall not exceed Two Million and 00/100 Dollars (\$2,000,000.00). The Lender's portion of the Commitment shall: (a) reduce to zero immediately after the borrowing of the Loan pursuant to this Section 2.01; and (b) terminate immediately and without further action on the Loan Termination Date. Amounts paid or prepaid in respect of Loan may not be re-borrowed.

SECTION 2.02. Loan. (a) The Lender shall make a portion of the Loan in accordance with its Commitment, the amount of which is listed on Exhibit "A" to the Note..

(b) The Lender shall make its portion of the Loan set forth on Exhibit "A" to the Note on the Closing date by wire transfer of immediately available funds to such account as the Borrower may designate in writing.

SECTION 2.03. Evidence of Debt/Repayment of Loan. (a) The Borrower hereby unconditionally promises to pay to the Lender the Lender's portion of the principal amount of the Loan, as provided in Section 2.07 hereof and pursuant to the Note.

(b) The Lender shall maintain an account or accounts evidencing its portion of the indebtedness of the Borrower to the Lender resulting from the Loan made by the all of the Lenders from time to time, including the amounts of principal and interest payable and paid to the Lender from time to time under this Agreement and under the Note.

(c) The entries made in the accounts maintained pursuant to Section 2.03(b) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; provided, however, that the failure of the Lender to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loan in accordance with their terms.

(d) The Loan shall be evidenced by and shall be repaid pursuant to the terms of the Note.

SECTION 2.04. Basic Interest and Fees on Loan/Loan Fee.

(a) Subject to the provisions of Section 2.05 hereof, the Loan shall bear Basic Interest (computed on the basis of the actual number of days elapsed over a year of three hundred sixty (360) days).

(b) Basic Interest on the Loan shall be due and payable to the Lender on the Maturity Date, except as otherwise expressly provided in this Agreement or in the Note.

(c) The Borrower's obligation to pay the Loan Fee, including the Lender's portion thereof, shall survive prepayment or payment of the Note and other Obligations under this Credit Agreement.

(d) The Borrower acknowledges and agrees that its obligation to pay the Loan Fee is a material inducement to the Lender's desire and willingness to enter into this Agreement and the Loan Documents and to make the Loan pursuant thereto.

(e) The Borrower shall pay in full and in immediately available funds the Loan Fee on or before the Loan Fee Maturity Date.

SECTION 2.05. Late Charge/Default Interest. If an Event of Default under this Agreement or the other Loan Documents has occurred and is continuing after notice thereof, the Borrower shall: (a) on demand from the Lender pay a late charge equal to five percent (5%) of any past-due amount owed hereunder; and (b) on demand from time to time pay Basic Interest, in all cases, at the rate otherwise applicable to the Loan pursuant to Section 2.04, plus six percent (6.00%) per annum until such Event of Default is cured in accordance with this Agreement.

SECTION 2.06. Termination and Reduction of Commitment. (a) The Commitment shall automatically terminate on the Loan Termination Date.

(b) Upon at least one (1) Business Day's prior irrevocable written or fax notice to the Lender, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, the Commitment.

SECTION 2.07. Repayment of Loan. (a) The Note shall require that, to the extent not previously paid, the principal of the Loan, all Basic Interest and all other amounts due under the Note (other than the payment of the Loan Fee), shall be due and payable on the Maturity Date, and that the Loan Fee shall be due and payable in full on the Loan Fee Maturity Date.

(b) All repayments pursuant to this Section 2.07 shall be without premium or penalty, except for any Default Interest and any other amounts due under the Note and except for payment of the Loan Fee.

SECTION 2.08. Voluntary Prepayment. (a) The Borrower shall have the right at any time and from time to time to make a Voluntary Prepayment of all or any portion of the principal amount owed under the Loan, upon at least one Business Day's prior written or fax notice (or telephone notice promptly confirmed by written or fax notice), to the Lender before 12:00 (noon), New York City time; provided, however, that each partial prepayment shall be in an amount that is a multiple of \$10,000, and further provided that Borrower's obligation to pay the

Loan Fee shall survive prepayment of the Loan until the Litigation Proceeds have become available from which the Loan Fee shall be paid in accordance with the Note.

(b) Each notice of Voluntary Prepayment: (i) shall specify the prepayment date and the principal amount of each Loan (or portion thereof) to be prepaid; and (ii) shall be irrevocable and shall commit the Borrower to prepay the Loan by the amount stated therein on the date stated therein. All prepayments under this Section 2.08 shall be without premium or penalty.

SECTION 2.09. Payments. (a) The Borrower shall make each payment (including costs owned hereunder, principal, Basic Interest, Default Interest, the Loan Fee and all other amounts due under the Note) hereunder, under any other Loan Document and, to the extent payable to the Lender, under the Order, not later than 1:00 p.m., New York City time, on the date when due in immediately available funds, without setoff, defense or counterclaim. Each such payment shall be made to the Lender at an address and account identified in writing by the Lender.

(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or Basic Interest and any Default Interest owed on any Loan or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of Basic Interest and Default Interest, if applicable.

(c) Except for a Voluntary Prepayment, all other payments due under the Note and hereunder shall first be applied to any costs owed under the Note or the other Loan Documents, then to accrued Basic Interest and any Default Interest owed on the principal amount being prepaid to the date of payment, and then to the principal amount owed.

SECTION 2.10. Taxes. The Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Lender that:

SECTION 3.01. Organization; Powers. The Trustee is, pursuant to 11 U.S.C. §1104, the duly appointed, authorized and acting trustee for the bankruptcy estates of the Debtors, having and exercising all rights of a trustee under 11 U.S.C. §1106.

SECTION 3.02. Enforceability. Upon the entry of the Order, this Agreement shall have been, and each other Loan Document shall have been upon delivery thereof pursuant to the terms of this Agreement, duly executed and delivered by the Borrower. Subject to the entry of the Order, this Agreement is, and each of the other Loan Documents will be, a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent

conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general equitable principles.

SECTION 3.03. Governmental Approvals. Subject to the entry of the Order, no action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required in connection with the Transactions, except for such as have been made or obtained and are in full force and effect.

SECTION 3.04. Title to Properties; Possession Under Leases. Other than as a result of the Bankruptcy Case, the Borrower has good and marketable title to, or valid leasehold interests in, all its material properties and assets, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes. Subject to the Order, all such material properties and assets. are free and clear of Liens, other than Liens expressly permitted by Section 6.02.

SECTION 3.05. Litigation/Compliance with Laws. Except as expressly set forth on the Schedules of Assets and Liabilities and Statements of Financial Affairs already filed by Debtors in the Bankruptcy Case, and other than the Bankruptcy Case, and except as set forth on Schedule 3.05, there are no actions, suits or proceedings at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or its business, property or rights that involve any Loan Document or the Transactions contemplated hereby.

SECTION 3.06. Use of Proceeds. The Borrower will use the proceeds of the Loan solely: to pay fees and expenses related to the administration of the Bankruptcy Case, the operation of the Debtors and the costs related to the Litigation and the consummation of the Transactions contemplated by and subject to the terms of this Agreement. The Borrower shall use the entire amount of the proceeds of each Loan solely in accordance with this Section 3.06; provided, however, that nothing herein shall in any way prejudice or prevent the Lender from objecting, for any reason, to any requests, motions or applications made in the Bankruptcy Court, including any applications for interim or final allowances of compensation for services rendered or reimbursement of expenses incurred under clause (a) of Section 105, or Section 330 or 331 of the Bankruptcy Code, by any party in interest. For avoidance of doubt, no proceeds of the Loan or any cash collateral shall be available for any fees or expenses incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Lender.

SECTION 3.07. No Material Misstatements. No information, report, financial statement, exhibit or schedule furnished by or on behalf of the Borrower to the Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto, when taken as a whole, contained, contains or will contain any material misstatement of fact; provided that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, the Borrower represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule.

SECTION 3.08. Insurance. Schedule 3.08 sets forth a true, complete and correct description of all insurance maintained by the Borrower as of the Closing Date. As of the Closing Date, such insurance is in full force and effect and all premiums have been duly paid. The Borrower has insurance in such amounts and covering such risks and liabilities as are in accordance with normal industry practice.

SECTION 3.09. Secured, Super-Priority Obligations. (a) On and after the Closing Date and pursuant to the Order, the provisions of the Loan Documents are effective to create in favor of the Lenders, legal, valid and perfected Liens on and security interests (having the priority provided for herein and in the Order) in all right, title and interest in the Collateral, enforceable against the Borrower.

(b) Pursuant to the Order, all Obligations will be secured and the Collateral shall be encumbered by valid and perfected first-position liens and security interests, subject only to the Requisite Priority.

(c) Pursuant to clause (c)(1) of Section 364 of the Bankruptcy Code and the Order, all obligations of the Borrower under the Loan Documents (including any exposure of the Lender in respect of cash management or hedging transactions incurred on behalf of the Borrower) at all times shall constitute allowed super-priority administrative expense claims in the Bankruptcy Case having priority over all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code.

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

SECTION 3.10. Location of Real Property and Leased Premises. Schedule 3.10(a) lists completely and correctly as of the Closing Date all real property owned by the Borrower and the addresses thereof. Subject to the Bankruptcy Case, the Borrower, as of the Closing Date, owns in fee all the real property set forth on Schedule 3.10(a). Schedule 3.10(b) lists completely and correctly as of the Closing Date all material real property leased by the Borrower and the addresses thereof. Subject to the Bankruptcy Case, the Borrower, as of the Closing Date has valid leasehold interests in all the real property set forth on Schedule 3.10(b).

SECTION 3.11. Deposit Accounts. The only deposit accounts, securities accounts or commodity accounts maintained by the Borrower on the date hereof are those listed on Schedule 3.11.

SECTION 3.12 Ownership of Collateral. The Borrower owns the Collateral, including, without limitation, all rights as plaintiff in or as a party to the Litigation and the right to receive and pay the Litigation Proceeds to the Lenders, each of which shall be entitled to its proportionate share thereof, in accordance with the Note, free and clear of liens, claims, and encumbrances, except those claims properly and timely filed in the Bankruptcy Case, including, without limitation, claims for the payment of legal fees in connection with the Litigation. Notwithstanding the foregoing or anything to the contrary contained herein or in the Loan

Documents, Borrower makes no representation, warranty or claim as to Debtors' undisputed ownership rights with respect to the Intellectual Property that is the subject of the Litigation..

## **ARTICLE IV**

### **CONDITIONS OF LENDING**

SECTION 4.01. All Credit Events. The obligations of the Lender to make its portion of the Loan hereunder are subject to the satisfaction of the following conditions as of the Closing Date (a "Credit Event"):

(a) The representations and warranties set forth in Article III hereof and in each other Loan Document shall be true and correct in all material respects.

(b) At the time of and immediately after such Credit Event, no Event of Default or Default shall have occurred and be continuing.

(c) The Bankruptcy Court shall have issued the Order.

(d) The Lender shall have received all fees and other amounts due and payable (to the extent invoiced) on the Closing Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document.

(e) This Agreement and the other Loan Documents shall have been duly executed and delivered to the Lender by the Borrower and shall be in full force and effect on the Closing Date. Except as provided in the proviso to the preceding sentence, the Lender shall have a security interest in the Collateral of the type and priority described in each Security Document.

(f) The Lender shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.02 and the applicable provisions of the Security Documents, each of which shall be endorsed or otherwise amended to include a customary lender's loss payable endorsement and to name the Lender as additional insured, in form and substance satisfactory to the Lender.

(g) There shall not have occurred any event, circumstance, change, development or effect that, individually or in the aggregate with all other events, circumstances, conditions, changes, developments or effects, has had, or would reasonably be expected to have, a Material Adverse Effect.

(h) Immediately after giving effect to the Transactions, the Borrower shall have no Indebtedness or preferred stock outstanding other than Indebtedness permitted by Section 6.01.

(i) The Lenders shall have executed and delivered to each other the Collateral Agent Agreement, and the Lenders other than the Lender shall have executed and delivered to the Borrower duplicate originals of this Agreement and the other Loan

Documents. Notwithstanding the confidentiality requirements contained herein, the Borrower shall provide copies of all such duplicate originals to all Lenders.

## ARTICLE V

### AFFIRMATIVE COVENANTS

The Borrower covenants and agrees with the Lender that so long as this Agreement and the Note and other Loan Documents shall remain in effect and until the Lender's portion of the Commitment has been terminated and the principal of and interest on the Loan, all fees and all other expenses or amounts payable under any Loan Document, shall have been paid in full, unless the Lender shall otherwise consents in writing, the Borrower will:

SECTION 5.01. Existence; Businesses and Properties. Except as otherwise excused by the Bankruptcy Code, do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect all Intellectual Property owned or held by the Borrower that is the subject of the Litigation or is material to the conduct of its business.

SECTION 5.02. Insurance. (a) Keep its insurable properties adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks, including fire and other risks insured against by extended coverage, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by it; and maintain such other insurance as may be required by law.

(b) Cause all such policies covering any Collateral to be endorsed or otherwise amended to include a customary lender's loss payable endorsement, in form and substance reasonably satisfactory to the Lender, which endorsement shall provide that, from and after the Closing Date, if the insurance carrier shall have received written notice from the Lender of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower under such policies directly to the Lender; cause all such policies to provide that neither the Borrower, the Lender nor any other party shall be a coinsurer thereunder and to contain a "Replacement Cost Endorsement", without any deduction for depreciation, and such other provisions as the Lender may reasonably require from time to time to protect its interests; deliver original or certified copies of all such policies to the Lender; cause each such policy to provide that it shall not be canceled, modified or not renewed: (i) by reason of nonpayment of premium upon not less than ten (10) days' prior written notice thereof by the insurer to the Lender (giving the Lender the right to cure defaults in the payment of premiums); or (ii) for any other reason upon not less than thirty (30) days' prior written notice thereof from the insurer to the Lender, delivered prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Lender) together with evidence reasonably satisfactory to the Lender of payment of the premium therefor.

(c) Notify the Lender immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.02 is taken out by the Borrower; and promptly deliver to the Lender a duplicate original copy of such policy or policies.

SECTION 5.03. Litigation and Other Notices. Furnish to the Lender prompt written notice of the following:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower in an aggregate amount exceeding \$100,000;

(c) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect; and

(d) from time to time as requested by Lender, but not more than once each calendar month through the Loan Fee Maturity Date, a summary report about the status of the Litigation, which report shall include a summary of the procedural status of the Litigation and may include notification of the scheduling of mediation or arbitration in the Litigation, and any material changes to existing scheduling orders or trial dates in the Litigation.

SECTION 5.04. Information Regarding Collateral. The Borrower agrees promptly to notify the Lender if any material portion of the Collateral is damaged or destroyed.

SECTION 5.05. Maintaining Records/Access to Properties and Inspections. Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all requirements of law are made of all dealings and transactions in relation to its business and activities. The Borrower will, subject to applicable confidentiality provisions and applicable privileges, permit any representatives designated by the Lender to visit and inspect the financial records and the properties of the Borrower at reasonable times and to make extracts from and copies of such financial records, and permit any representatives designated by the Lender to discuss the affairs, finances and condition of the Borrower with the officers thereof, the independent accountants therefor and any other party in interest to the Bankruptcy Case.

SECTION 5.06. Use of Proceeds. Use the proceeds of the Loan only for the purposes set forth in Section 5.10 hereof.

SECTION 5.07. Further Assurances. Execute any and all further documents, including the Loan Documents, financing statements, agreements and instruments, and take all further action (including filing Uniform Commercial Code and other financing statements, mortgages and deeds of trust and documents or other instruments with the United States Patent & Trademark Office and the United States Copyright Office or any similar foreign registry, as applicable), that the Lender may reasonably request in order to effectuate the Transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the

validity and first priority of the security interests created or intended to be created by the Security Documents. In the Lender's discretion, the Lender may elect to file the Order in lieu of or in addition to UCC-1 financing statements. [The Borrower and Lender shall promptly complete, execute, and delivery all of such further documents.](#)

SECTION 5.08. Bankruptcy Case. The Borrower shall use its best efforts to obtain an order of the Bankruptcy Court authorizing the Borrower to enter into this Agreement and the other Loan Documents and deliver or cause to be delivered to the Lender and the Lender's counsel all material pleadings, motions and other documents filed on behalf of all of the Borrower with the Bankruptcy Court.

SECTION 5.09. Bankruptcy Sale and Auction Process. The Borrower shall keep the Lender informed at all times of all public information on all matters related to the sale and auction process of all SCO's assets under Section 363 of the Bankruptcy Code.

SECTION 5.10. Use of Loan Proceeds/Sale of Core Assets/Use of Proceeds from Sale of Core Asset and Other Assets.

(a) Notwithstanding any other provision hereof or of the other Loan Documents, the Borrower may deposit up to fifty percent (50%) of the Loan proceeds into a segregated account to be used to pay past and ongoing Litigation trial costs and litigation related expenses of the Trustee, including the payment of the reasonable compensation expense of retaining Messrs. Tibbitts and Broderick, both SCO employees, to assist in the Litigation. The remaining fifty percent (50%) of the Loan proceeds may be used for SCO operational expenses, including, without limitation, unpaid administration expenses of the SCO Estates in the Trustee's discretion.

(b) The Borrower may without the prior consent of, but with prior written notice to, Lender also retain and use fifty percent (50%) of the net proceeds (defined as gross proceeds from one or more Core Asset Sale(s), less the direct and reasonable closing fees and expenses of the sale or license transaction) from any Core Asset Sales and one hundred percent (100%) of the proceeds from the sale of all other SCO assets (excluding the sale of any rights in the Litigation and/or any portion of the Litigation proceeds), but the Borrower shall at the time of any such Core Assets Sale(s) pay the remaining fifty percent (50%) of such net sales or license proceeds toward retirement and payment of the amount due under the Note, other than payment of the Loan Fee. Such Note payments shall not be credited toward payment of the Loan Fee.

(c) Borrower shall have the right to use cash collateral arising and existing from Borrower's operation of SCO's business in accordance with the Order, this Agreement and the other Loan Documents.

## **ARTICLE VI**

### **NEGATIVE COVENANTS**

The Borrower covenants and agrees with the Lender that, so long as this Agreement shall remain in effect and until the Lender's portion of the Commitment has been terminated and the principal of and interest on the Loan, all fees and all other expenses or amounts payable under any Loan Document have been paid in full, unless the Lender shall otherwise consent in writing, the Borrower will not:

SECTION 6.01. Indebtedness. Incur, create, assume or permit to exist any secured Indebtedness, except:

- (a) Indebtedness of the Borrower existing on the date hereof and set forth on Schedule 6.01;
- (b) Indebtedness created hereunder and under the other Loan Documents;
- (c) Indebtedness under performance bonds or with respect to workers' compensation claims, in each case incurred in the ordinary course of business; and
- (d) Indebtedness from the Lender pursuant to Section 6.13 hereof.

SECTION 6.02. Liens. Create or incur any Lien on any of the Collateral or on any property or assets (including Equity Interests or other securities of any Person) now owned or hereafter acquired by the Borrower or on any income or revenues or rights in respect of any thereof of the Borrower, except the following (subject (except with respect to (b) below) at all times to the Requisite Priority requirements of this Agreement):

- (a) Liens existing on the date hereof and as set forth in Schedule 6.02; provided that such Liens shall secure only those obligations which they secure on the date hereof;
- (b) any Lien created under the Loan Documents;
- (c) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business and securing obligations that are not due and payable or which are being contested in compliance with Section 5.03;
- (d) pledges and deposits in compliance with workmen's compensation, unemployment insurance and other social security laws or regulations;
- (e) deposits to secure the performance of bids, trade contracts (other than for Indebtedness for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (f) except in connection with any Core Asset Sale(s), non-exclusive licenses of Intellectual Property incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower;

(g) judgment liens securing judgments that have not resulted in an Event of Default under Article VII;

(h) any interest or title of a lessor under any lease entered into by the Borrower in the ordinary course of business and covering only the assets so leased; and

(i) Liens in respect of indebtedness permitted by Section 6.01(d).

Until the Loan (other than the Loan Fee, which shall be paid solely from the Litigation Proceeds) is repaid in full, the priority of the Lender's liens and security interests contemplated by this Agreement and granted under the Loan Documents shall remain as first-position and first-priority liens, subject to the Requisite Priority. Further, the Borrower agrees that it shall not take any action, make any motion or request of the Bankruptcy Court, make any verbal or other agreement, or engage in any omission that will result in a decision from the Bankruptcy Court that will cause the Lender to lose such first-position or first-priority of its liens and security interests against all or any portion of the Collateral, unless and until the Loan is repaid in full.

**SECTION 6.03. Sale and Leaseback Transactions.** Except for Core Asset Sales and the other sales of SCO assets permitted hereunder, enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

**SECTION 6.04. Investments, Loans and Advances.** Purchase, hold, or acquire any Equity Interests, evidences of Indebtedness or other securities.

**SECTION 6.05. Mergers, Consolidations, Sales of Assets and Acquisitions.** Except for one or more Core Asset Sales: (a) merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease, license, abandon, cancel, permit to lapse, or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of the assets (whether now owned or hereafter acquired) of the Borrower), or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person, except that: (i) the Borrower may purchase and sell inventory, and license its Intellectual Property, in the ordinary course of business; and (ii) if at the time thereof and immediately after giving effect thereto no Event of Default or Default shall have occurred and be continuing, any Wholly Owned Subsidiary may merge into or consolidate with the Borrower in a transaction in which the Borrower is the surviving corporation and in which no Person other than the Borrower receives any consideration. Notwithstanding the foregoing restriction on the sale of any assets of the Borrower, the Lender hereby consents to the sale of any and all assets of the Borrower, except for the Borrower's claims and rights related to the Litigation and the Litigation Proceeds; or

(b) Notwithstanding and in addition to any other provision and/or restriction contained in this Agreement or in the other Loan Documents, the Borrower shall not have the right to sell or further encumber all or any portion of its rights in the Litigation or in the Litigation Proceeds, but this restriction shall not prevent the Borrower from obtaining

additional financing in accordance with and subject to the restriction set forth in Section 6.13 hereof, so long as no liens or encumbrances are created in connection with such addition financing.

SECTION 6.06. Restricted Payments; Restrictive Agreements. (a) Declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so; provided, however, that the Borrower may provide reasonable compensation, customary employee benefit arrangements and indemnities for their respective directors and officers consistent with past practices or as otherwise approved by the Bankruptcy Court or otherwise approved in writing by the Lender.

(b) Enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon the ability of the Borrower to create, incur or permit to exist any Lien upon any of its property or assets to secure the Obligations or any refinancing thereof, or; provided that: (A) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document as in effect on the date hereof; (B) the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness, in each case permitted by this Agreement, if such restrictions or conditions apply only to the property or assets securing such Indebtedness or subject to such lease; and (C) the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof..

SECTION 6.07. Transactions with Affiliates. Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except that:

(a) the Borrower may engage in any of the foregoing transactions in the ordinary course of business;

(b) Restricted Payments may be made to the extent provided in Section 6.06; and

(c) loans may be made and other transactions may be entered into between and among the Borrower and its Affiliates in the ordinary course of its business or to the extent permitted by Sections 6.01 and 6.04.

SECTION 6.08. Business of Borrower. Engage at any time in any business or business activity other than the business currently conducted by it and reasonable extensions thereof and business activities reasonably incidental thereto.

SECTION 6.09. Other Indebtedness and Agreements. (a) Permit any waiver, supplement, modification, amendment, termination or release of any indenture, instrument or agreement pursuant to which any Material Indebtedness of the Borrower is outstanding if the effect of such waiver, supplement, modification, amendment, termination or release would increase the obligations of the obligor or confer additional material rights on the holder of such Indebtedness in a manner materially adverse to the Borrower or the Lender, unless such amended Material Indebtedness could be incurred under Section 6.01.

(b) (i) Make any distribution, whether in cash, property, securities or a combination thereof, in respect of, or pay, or offer or commit to pay, or directly or indirectly redeem, repurchase, retire or otherwise acquire for consideration, or set apart any sum for the aforesaid purposes, notes or any subordinated Indebtedness (other than inter-company subordinated Indebtedness); or (ii) pay in cash any amount in respect of any Indebtedness or preferred Equity Interests that may at the obligor's option be paid in kind or in other securities.

(c) Unless consented to by the Lender (such consent not to be unreasonably withheld) and approved by the Bankruptcy Court, make any payment, whether in cash, property, securities or a combination thereof, to compromise or settle any proceeding listed on Schedule 3.05 for an amount less than sufficient to pay the Loan in full, or any other material litigation or proceeding.

SECTION 6.10. Capital Expenditures. Permit any additional Capital Expenditures by the Borrower from the Closing Date until the Loan Fee Maturity Date, without the written consent of the Lender, which shall not be unreasonably withheld.

SECTION 6.11. Chapter 11 Claims. Incur, create, assume or permit to exist any administrative expense, unsecured claim, or other super-priority claim or lien that is pari passu with or senior to the claims of the Lender against the Borrower.

SECTION 6.12. The Order. Make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Order without the prior written consent of the Lender, except for any change, amendment or modification that would not adversely affect the Lender.

SECTION 6.13. Right of First Refusal for Additional Indebtedness. The Borrower has agreed to certain restrictions set forth herein with respect to incurring additional Indebtedness herein. Should the Borrower incur additional Indebtedness from another Person other than the Lender on terms that are more expensive than the terms of the Loan hereunder, then the terms of the Loan shall be automatically modified and increased to be equal to the terms of such additional Indebtedness. In connection with and as result of obtaining such additional Indebtedness and in connection with any other covenant or agreement of the Borrower with any third party or parties, Lender's right to receive the Loan Fee from the Litigation Proceeds shall not be diluted or otherwise reduced or diminished.

## **ARTICLE VII**

### **EVENTS OF DEFAULT**

In case of the happening of any of the following events (each, an "Event of Default" and together, "Events of Default"):

(a) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings hereunder, or any representation, warranty,

statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any Basic Interest or Default Interest on any Loan or any fee or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days after Borrower receives such notice;

(d) default shall be made in the due observance or performance by the Borrower of any covenant, condition or agreement contained in: (i) Section 5.03(a) or (c), and such failure shall continue unremedied for five (5) Business Days; or (ii) Sections 5.04, 5.06, 5.10 or Article VI, and such default shall remain unremedied for a period of ten (10) Business Days;

(e) default shall be made in the due observance or performance by the Borrower of any covenant, condition or agreement contained in any Loan Document (other than those specified in (b), (c) or (d) above) and such default shall continue unremedied for a period of thirty (30) days after notice thereof from the Lender to the Borrower;

(f) the Borrower shall fail to pay any principal, Basic Interest or Default Interest or any other amount due under any Loan, regardless of amount, or any other amount due in respect of any Indebtedness arising after the Petition Date (other than the Obligations), when and as the same shall become due and payable;

(g) an ERISA Event shall have occurred that, in the opinion of the Lender, when taken together with all other such ERISA Events, could reasonably be expected to result in liability of the Borrower and its ERISA Affiliates in an aggregate amount exceeding \$100,000;

(h) (i) The Loan Documents and the Order shall, for any reason, cease to create a valid Lien on any of the Collateral purported to be covered thereby or such Lien shall cease to be a perfected Lien having the priority provided herein pursuant to Section 364 of the Bankruptcy Code against the Borrower, or the Borrower shall so allege in any pleading filed in any court or any material provision of any Loan Document shall, for any reason, cease to be valid and binding on the Borrower or the Borrower shall so state in writing; or (ii) the Borrower shall file a complaint or initiate any other action against the Lender or any entity shall obtain a judgment that affects the Lender's claims or the Collateral, except to the extent expressly allowed in the Order;

(i) Either of the cases constituting the Bankruptcy Case shall be dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of either of the cases constituting the Bankruptcy Case), suspended or converted to a case under Chapter 7 of the Bankruptcy Code, or the Borrower shall file any pleading requesting any such relief; or an application shall be filed by the Borrower for the approval of, or there shall arise: (i) any other claim having priority senior to or pari passu with the claims of the Lender under the Loan Documents or any other claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code or the additional Indebtedness permitted hereunder; or (ii) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except as expressly provided herein;

(j) The Trustee resigns, is removed, becomes incapacitated or otherwise becomes unable to perform his duties under the Bankruptcy Code and a new Trustee not reasonably acceptable to Lender is appointed by the Bankruptcy Court;

(k) (i) the Order shall: (i) not have been entered by the Bankruptcy Court on or before the thirtieth (30th) day following the Closing Date; (ii) from and after the date of entry thereof, the Order shall cease to be in full force and effect; (iii) the Borrower shall fail to comply with the terms of the Order in any material respect; or (iv) the Order shall be amended, supplemented, stayed, reversed, vacated or otherwise modified (or the Borrower shall apply for authority to do so) without the written consent of the Lender in a manner that has a Material Adverse Effect on Lender and/or not provided for in this Agreement and/or the other Loan Documents;

(l) the Borrower shall file a motion seeking, or the Bankruptcy Court shall enter, an order: (i) granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets; or (ii) except to the extent the same would not constitute a Default hereunder, approving any settlement or other stipulation with any creditor of the Borrower, other than the Lender without the Lender's consent, which shall not be unreasonably withheld;

(m) claims arising under Section 506(c) of the Bankruptcy Code shall be asserted against the Lender by the Borrower or other actions adverse to the Lender or its rights and remedies hereunder or under any other Loan Document or any Bankruptcy Court order shall be commenced by the Borrower;

(n) after the Effective Date, there shall occur any event or circumstances (or series of events or circumstances) that has a Material Adverse Effect in the aggregate since the Effective Date;

(o) the Borrower shall consummate a sale or license of all or substantially all of SCO Assets without the consent of the Lender not otherwise permitted by this Agreement; or

(p) the Litigation Proceeds are not sufficient to repay the Loan Fee in full on or before the Loan Fee Maturity Date and all other amounts owed to creditors with rights senior to those held by the Lender hereunder and under the Loan Documents,

then, during the continuance of any Event of Default, without further order of, application to, or action by, the Bankruptcy Court, the Lender: (a) may by notice to the Borrower declare that all the Lender's portion of the Commitment be terminated, whereupon any and all obligations of the Lender to make a portion of the Loan shall immediately terminate; and (b) may by notice to the Borrower, declare the Loan, all Basic Interest and Default Interest owed thereon and all other amounts and Obligations payable under this Agreement in respect thereof to be forthwith due and payable, whereupon the Loan, all such interest and all such amounts and Obligations, shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower. In addition, subject solely to any requirement of the giving of notice by the terms of the Order, the Debtor shall have a period of five (5) business days in which to either cure the Default or obtain a scheduled court hearing with regard to the default. In the event the Debtor fails to either cure the Default or obtain a scheduled court hearing with regard to the Default, the automatic stay provided in Section 362 of the Bankruptcy Code shall be deemed automatically vacated without further action or order of the Bankruptcy Court, and the Lender shall be entitled to exercise all of its respective rights and remedies under the Loan Documents, including all rights and remedies with respect to the Collateral; provided however, Lender shall have no right to take any action with respect to the Litigation. Notwithstanding the foregoing provisions, upon the occurrence of an Event of Default, the Borrower shall have the right to use any cash available at such time for the payment of its fees and administrative expenses.

## **ARTICLE VIII**

### **MISCELLANEOUS**

SECTION 8.01. Notices. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

If to the Borrower, to it at	Edward N. Cahn, Blank Rome LLP 7535 Windsor Drive Suite 200 Allentown,
With a copy to:	Bonnie G. Fatell, Esquire Blank Rome LLP 1201 Market Street, Suite 800 Wilmington, DE 19801
If to the Lender, to them at	Seung Ni Capital Partners, L.L.C. <hr/> Attn: Ralph Yarro

With a copy to: Holland & Hart LLP  
60 East South Temple  
Suite 2000  
Salt Lake City, Utah 84111  
Attn: Mona L. Burton

and

Holland & Hart LLP  
222 South Main  
Suite 2200  
Salt Lake City, Utah 84111  
Attn: Mona L. Burton

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 8.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 8.01. Any party hereto may change its address for notices by giving notice of such change to each party hereto in accordance with this Section 8.01. In addition, the Lender and the Borrower may agree from time to time that notices hereunder for certain specified purposes may be delivered by e-mail, in which case such notices will be as effective as if delivered by fax.

SECTION 8.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lender and shall survive the making by the Lender of its portion of the Loan, regardless of any investigation made by the Lender or on its behalf, and shall continue in full force and effect as long as the principal of or any accrued Basic Interest and Default Interest owed on any Loan or any fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Lender's portion of the Commitment has not been terminated. The obligation to pay the Loan Fee and the provisions of Section 8.05 hereof shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the Transactions contemplated hereby, the repayment of the Loan, the expiration of the Lender's portion of the Commitment, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document.

SECTION 8.03. Binding Effect. This Agreement shall become effective in accordance with the terms set forth herein and shall bind and inure to the benefit of the parties hereto and of their respective successors and assigns, to the extent any such assignment is expressly permitted hereunder.

SECTION 8.04. Successors and Assigns. (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower and the Lender that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) The Lender may assign to one or more assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment and its portion of the Loan at the time owing to it).

(c) The Lender may without the consent of the Borrower sell participations to one or more banks or other entities in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loan owing to it); provided, however, that: (i) the Lender's obligations under this Agreement shall remain unchanged; (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; (iii) the participating banks or other entities shall be entitled to the benefit of the protections given to the Lender hereunder and shall be bound by the confidentiality provisions contained in Section 8.16 hereof to the same extent as if they were the Lender; and (iv) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement, and the Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loan and to approve any amendment, modification or waiver of any provision of this Agreement (other than amendments, modifications or waivers decreasing any fees payable to such participating bank or Person hereunder or the amount of principal or the rate at which interest is payable on the Loan in which such participating bank or Person has an interest, extending any scheduled principal payment date or date fixed for the payment of interest on the Loan in which such participating bank or Person has an interest, increasing or extending the Commitment of such participating bank or Person or releasing all or substantially all of the Collateral). All amounts payable by the Borrower to the Lender hereunder in respect of any Loan and the applicability of the protection provisions contained herein shall be determined as if the Lender had not sold or agreed to sell any participation in the Loan, and as if the Lender were funding the participated portion of the Loan the same way that it is funding the portion of the Loan in which no participation has been sold.

(d) The Lender or participant may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 8.04, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to the Lender by or on behalf of the Borrower; provided that, prior to any such disclosure of information designated by the Borrower as confidential, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary exceptions) to preserve the confidentiality of such confidential information on terms no less restrictive than those applicable to the Lender pursuant to Section 8.15.

(e) The Lender may at any time assign all or any portion of its rights under this Agreement to secure extensions of credit to the Lender or in support of obligations

owed by the Lender; provided that no such assignment shall release the Lender from any of its obligations hereunder or substitute any such assignee for the Lender as a party hereto. If the Lender is a fund that invests in bank loans it may (without the consent of the Borrower) pledge all or any portion of its rights in connection with this Agreement to the trustee for holders of obligations owed, or securities issued, by such fund as security for such obligations or securities, provided that any foreclosure or other exercise of remedies by such trustee shall be subject to the provisions of this Section 8.04 regarding assignments in all respects. No pledge described in the immediately preceding sentence shall release such Lender from its obligations hereunder.

(f) The Borrower shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the Lender, which the Lender may grant or withhold in its sole discretion, and any attempted assignment without such consent shall be null and void.

**SECTION 8.05. Expenses; Indemnity.** (a) The Borrower agrees to pay all reasonable out-of-pocket expenses, incurred by the Lender and its Affiliates in connection with the consummation of the Transactions contemplated hereby and the preparation and administration of this Agreement and the other Loan Documents or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions hereby or thereby contemplated shall be consummated) or incurred by the Lender in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Loan made hereunder (including, with respect to this Section 8.05(a), the reasonable fees, charges and disbursements of Holland & Hart LLP, counsel for the Lender and, in connection with any such enforcement or protection, the fees, charges and disbursements of any other counsel for the Lender); provided, however, that the Lenders' legal fees for the preparation and consummation of the transaction contemplated by this Agreement and the other Loan Documents and for preparation and consummation of the duplicate originals of the Loan Documents between the other Lenders and the Borrower shall be capped at \$50,000.00. If, however, such aggregate legal fees exceed such \$50,000.00 cap, such excess legal fees shall be paid from the Litigation Proceeds and shall be in addition and shall not be a part of the payment of the Loan Fee.

(b) The Borrower agrees to indemnify the Lender and each Related Lender Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of: (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the Transactions contemplated thereby (including the Bankruptcy Case); (ii) the use of the proceeds of the Loan; or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or by the Borrower or any of its Affiliates); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or

related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) To the extent permitted by Applicable Law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions contemplated hereby (including the Bankruptcy Case), any Loan or the use of the proceeds thereof.

(d) The provisions of this Section 8.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the Transactions contemplated hereby, the repayment of the Loan, the expiration of the Commitment, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Lender. All amounts due under this Section 8.05 shall be payable on written demand therefor.

SECTION 8.06. Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE.

SECTION 8.07. Waivers; Amendment. (a) No failure or delay of the Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 8.07(b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Lender.

SECTION 8.08. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the Basic Interest and the Default Interest rates applicable to the Loan, together with all fees, charges and other amounts which are treated as interest on the Loan under Applicable Law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding a portion of the Loan in accordance with Applicable Law, the rate of Basic

Interest and Default Interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 8.08 shall be cumulated and the interest and Charges payable to the Lender in respect of other loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the annual interest rate of fourteen percent (14%) to the date of repayment, shall have been received by the Lender.

SECTION 8.09. Entire Agreement. This Agreement and the other Loan Documents constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 8.10. Waiver Of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO: (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.10.

SECTION 8.11. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8.12. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 8.01 hereof. Delivery of an executed signature page to this Agreement by facsimile transmission or electronic mail shall be deemed originals for all purposes and shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 8.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 8.14. Jurisdiction; Consent to Service of Process. (a) The Borrower and Lender each hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court and any appellate court therefrom, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Bankruptcy Court or, to the extent permitted by 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. The Lender waives any right it may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against the Borrower or its respective properties in the courts of any other jurisdiction.

(b) The Borrower and Lender each hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in the Bankruptcy Court). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 8.15. Confidentiality. The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed: (a) to its and its Affiliates' officers, directors, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority or quasi-regulatory authority (such as the National Association of Insurance Commissioners); (c) to the extent required by Applicable Law or by any subpoena or similar legal process (including, in each case, in respect of the Bankruptcy Case); (d) in connection with the exercise of any remedies hereunder or under the other Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder; (e) subject to an agreement containing provisions substantially the same as those of this Section 8.15 to: (i) any actual or prospective assignee of or participant in any of its rights or obligations under this Agreement and the other Loan Documents; or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of its obligations; (f) with the consent of the Borrower; or (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 8.15. For the purposes of this Section, "Information" means all information received

from the Borrower and related to the Borrower or its business, other than any such information that was available to the Lender on a non-confidential basis prior to its disclosure by the Borrower; provided that, in the case of Information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential or such information is of such a nature that a prudent person would expect such information to be confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 8.15 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord its own confidential information.

SECTION 8.16. Collateral Agent Agreement. The Borrower acknowledges and agrees that the Lender, as Agent and alone, shall have the right to enforce all Lenders' rights relating to the Collateral under the Loan Documents and under duplicate originals of all of the Loan Documents executed by the Lenders other than the Lender. This provision shall not be included in such duplicate originals of the Loan Documents executed by the Lenders other than the Lender.

SECTION 8.17 Other Provisions. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, the following overriding understandings and agreements shall prevail in the interpretation and enforcement of the intent of this Agreement and the other Loan Documents:

(a) Nothing herein shall cause or result in any personal liability to be imposed on the Trustee individually beyond the duties of a trustee under Applicable Law in the Bankruptcy Case. The Trustee has no personal liability, and the Lender hereby releases the Trustee from all personal liability, with respect to his payment of any monetary obligations related to the Loan or the covenants in the Loan Documents and/or related to any representations or warranties made herein or in any of the other Loan Documents. This provision is not intended to relieve the Trustee from performance of any and all of the obligations under this Agreement and the other Loan Documents in his capacity as trustee of the Estates.

(b) Other than Lender's rights expressly set forth herein and in the other Loan Documents, as the same may be enforced in accordance with Applicable Law, the Lender does not have any right to interfere with or participate in the conduct or prosecution of the Litigation or to participate in or approve any settlement of the Litigation.

(c) The Lenders' rights to and in the Collateral are subject to the Lenders' actual disbursement of the Loan proceeds to the Borrower hereunder on the Closing Date; provided however, that if after execution of this Agreement the Borrower fails to obtain the Order contemplated by this Agreement, the Borrower shall pay Lender's expenses up to a maximum of \$50,000.00, subject to the payment of additional Lender legal fees in the manner set forth in Section 8.05(a) hereof. In addition, if for any reason the amount of the Loan is less than Eight Hundred Thousand and 00/100 Dollars (\$800,000.00), Borrower may, in its discretion, either elect to waive such minimum Loan amount requirement and close the Transactions, or Borrower may elect not to close the

Transactions, in which event Borrower shall nonetheless pay Lender's legal fees, subject to the foregoing \$50,000.00 cap.

IN WITNESS WHEREOF, the parties to this Agreement have executed it as of the date set forth on the cover page of this Agreement.

BORROWER:

Capacity  
of The  
Operations, Inc.,  
corporations

\_\_\_\_\_  
EDWARD N. CAHN, ~~Solely~~Solely in His  
as Trustee of the Bankruptcy Estates  
SCO Group, Inc. and SCO  
both Delaware

LENDER:

SEUNG NI CAPITAL PARTNERS, L.L.C.

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

SCHEDULE 3.05  
LITIGATION

There is no pending or threatened litigation, other than the Litigation, as defined in the attached Agreement.

SCHEDULE 3.08  
INSURANCE

**THE SCO GROUP, INC.**  
**Schedule of Insurance**

<b>Policy Type</b>	<b>Insurance Company</b>	<b>Policy Number</b>
Package Covers all entities	Chubb	3584082-53 WUC
Auto Covers all US-based owned auto Covers US and International hired auto	Chubb	7353-61-65
Umbrella Covers all entities	Chubb	79839981
E&O Covers all entities	AXIS Pro Technet Solutions	ECN000045290901
Employment Practices Liability Covers all entities	Carolina Casualty	4877831
Commercial Combined Liability Covers SCO Software (UK) Ltd.	AON	054/200/FR434488/5
Workers Compensation Covers US-based entities	Travelers	HFUB-451-4C83-6-09
ERISA Bond Covers US-based 401(k) Plan	Travelers	104334736
Directors and Officers Liability (Primary) (Tail policy effective 9/1/2009) Covers all entities	National Union	7131047
Directors and Officers Liability (Excess) (Tail policy effective 9/1/2009) Covers all entities	XL Specialty	ELU1036-5-08
Directors and Officers Liability (Excess)		

(Tail policy effective 9/1/2009)  
Covers all entities

Executive Risk

82081352

SCHEDULE 3.10(a)  
OWNED REAL ESTATE

None.

SCHEDULE 3.10(b)  
LEASED REAL ESTATE

The SCO Group  
Real Estate Lease  
Commitments  
12/31/09

<u>Location</u>	<u>Description</u>	<u>Landlord</u>	<u>Lease expiration</u>
25 A Vreeland Road Florham Park, NJ 07932	Office and engineering space	Vreeland SPVEF Venture LLC	10/31/2013
Norsk-Data-Str 3 61352 Bad Homburg, Germany	Office space	Corpus Sireo Asset Management GmbH	3/31/2010
2nd Floor Titan Court, 3 Bishop Square Hatfield AL10 9A UK	Office space	Regus	5/1/2010
GDITL Tower Netaji Subhash Place, Wazirpur District Centre, New Delhi, India	Office space	Manisha Bedi w/o Shri Rajinder Mohen Bedi	3/31/2011
13, rue Canale Desmoulins Issy Les Moulineaux, France	Office space	Regus	3/1/2010
333 South 520 West Suite 170 Lindon, Utah 84042	Office space	Canopy Properties Inc	12/31/2010
333 South 520 West Suite 170 Lindon, Utah 84042	Office space - Tenant <del>improvements</del> <a href="#">improvements</a>	Canopy Properties Inc	12/31/2010
1450 West 800 North Orem, Utah 84057	Storage units	Watchman Self Storage	month-to- month

SCHEDULE 3.11  
DEPOSIT ACCOUNTS

Allied Irish Bank	Account No. 61348635
Allied Irish Bank	Account No. 61348981
Allied Irish Bank	Account No. 61356067
Allied Irish Bank	Account No. 08907188
Zions First National Bank	Account No. 071026363
Zions First National Bank	Account No. 071026348
Zions First National Bank	Account No. 071026355
Zions First National Bank	Account No. 071026371
Zions First National Bank	Account No. 082500026
Wells Fargo Brokerage Services	Account No. 12821708

SCHEDULE 4.01(g)  
MATERIAL ADVERSE EFFECT

None.

SCHEDULE 6.01  
EXISTING INDEBTEDNESS

None.

SCHEDULE 6.02  
EXISTING LIENS

None.

EXHIBIT "A"  
COLLATERAL AGENT AGREEMENT  
[INSERT]

EXHIBIT "B"  
LIST OF COLLATERAL

1. Cash, checking, savings, and other accounts.
2. Security deposits paid by the Borrower, as tenant, under various leases.
3. Ownership interests in partnerships or joint ventures.
4. Accounts receivable.
5. Inventory.
6. Equipment, furnishings, and supplies.
7. Intellectual Property, as defined in the attached Credit Agreement.
8. Contract and similar rights.
9. Collateral expressly listed and identified in each of the Security Documents.

Notwithstanding the foregoing list, the "Collateral" shall expressly exclude the following: (a) all "Employee Carve-Out Amounts" referred to in that certain Security and Pledge Agreement that constitutes one of the Security Documents; (b) all causes of action under Chapter 5 of the Bankruptcy Code; and (c) any voting stock (or other voting equity interests) in excess of 65% of the outstanding voting stock (or other voting equity interests) of any foreign Subsidiary.

EXHIBIT "C"  
FORM OF ORDER

[INSERT]

EXHIBIT "D"  
NOTE

PROMISSORY NOTE

Up To \$2,000,000.00

March \_\_\_\_, 2010

For value received, the Borrower promises and agrees to pay to the order of the Lender, in lawful money of the United States of America, that portion of the principal sum of up to Two Million and 00/100 Dollars (\$2,000,000.00) set forth on Exhibit "A" hereto, or so much thereof as may be outstanding under the Credit Agreement, as defined herein, together with Basic Interest and other interest on the unpaid outstanding balance owing thereunder at the rate or rates or in the amounts computed in accordance with the Credit Agreement, together with all other amounts due Lender under this Note and under the Credit Agreement, all payable in the manner and at the time or times provided herein and in the Credit Agreement.

1. Definitions. Except as otherwise defined herein, each of the capitalized terms appearing in this Note shall have the meaning ascribed or given to it in that certain Secured Super-Priority Credit Agreement, of even date herewith, executed by and among the Borrower and [\_\_\_\_\_] (the "Credit Agreement"). This provision shall apply to all terms capitalized terms appearing hereinabove and hereinbelow.

2. Loan. The Lender shall make a portion of the Loan set forth on Exhibit "A" hereto in accordance, subject to, and in the manner set forth in terms and conditions of the Credit Agreement, the aggregate amount of which Loan shall not exceed Two Million and 00/100 Dollars (\$2,000,000.00).

3. Interest Rate/Maturity Date. From the date set forth on the face of this Note above through the Maturity Date, the outstanding balance of the Loan and of any other amounts due hereunder (other than the Loan Fee and including any amounts added to principal under the Loan Documents) shall bear interest at the Basic Rate of interest per annum. Any amounts owed hereunder and not repaid on the Maturity Date shall thereafter bear interest and shall be subject to the late charges set forth in Section 2.05 of the Credit Agreement.

4. Payment of Loan Fee/Loan Fee Maturity Date. The Borrower shall pay Lender's proportionate share of the Loan Fee to the Lender on the Loan Fee Maturity Date. Lender's proportionate share of the Loan Fee is equal to the total amount of the Loan Fee owed hereunder and under the Credit Agreement, multiplied by a fraction, the numerator of which is Lender's portion of the Loan disbursed to the Borrower under the Credit Agreement, and the denominator of which is the total amount of the Loan disbursed to the Borrower under the Loan Documents and under duplicate originals of the Loan Documents executed by Lenders other than the Lender and the Borrower in accordance with the Credit Agreement. Any portion of the Loan Fee owed

but not paid to the Lender on the Loan Fee Maturity Date shall bear interest at and shall be subject to the late charges set forth in Section 2.05 of the Credit Agreement. No Basic Interest or other interest shall accrue on the Loan Fee prior to the Loan Fee Maturity Date.

5. Payments on Loan. The Borrower shall also make payments of the amount owed hereunder from Core Asset Sales, as more fully set forth in the Credit Agreement.

6. Maturity Date/Loan Fee Maturity Date/Payments Made by Wire. Unless extended in writing by the Lender, and if not sooner due and payable in accordance with the Credit Agreement, the Borrower shall pay to the Lender all principal and other amounts due and unpaid hereunder and under the Credit Agreement on the Maturity Date and shall pay the Loan Fee on the Loan Fee Maturity Date. Unless otherwise specified in writing by the Lender, all payments hereunder shall be paid to the Lender by wire transfer in immediately available funds to the following account:

**[INSERT ACCOUNT NUMBER AND ABA ROUTING NUMBER]**

7. Default/Acceleration/Interest at Default Rate/Remedies. If any of the following events occurs:

(a) the Borrower fails to make payment of any amount due hereunder within five (5) days after the same becomes due and payable;

(b) any violation or breach of any provision of this Note (other than those listed in Subsections 6(a) and (b) hereof, each of which has shorter or no time period, respectively, for curing such defaults or breaches, and which do not require any written notice thereof to the Borrower) or of any other Loan Document, and if such Event of Default, breach or default does not involve the payment of a monetary obligation contained herein or in any of the other Loan Documents; or

(c) any default by the Borrower in the payment or performance of any obligation, or any Event of Default or any breach of or default under the terms of any contract or instrument (other than any of the Loan Documents) pursuant to which the Borrower has incurred any Indebtedness under Section 364 of the Bankruptcy Code, including the Lender, and that results in the acceleration of the payment of such Indebtedness or obligation,

then the default and remedies provisions set forth in the Credit Agreement, including, without limitation Article VII of the Credit Agreement, shall apply with respect to the Lender's rights and remedies, which is not intended to otherwise limit the Lender's other rights and remedies under Applicable Law.

8. Limitation of Interest Rate. If any interest is contracted for, charged or received under this Note or the Credit Agreement, or if all of the principal balance shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged or received under this Note or the Credit Agreement on the principal balance shall exceed the maximum amount of

interest permitted by applicable law, then in such event: (a) the provisions of this paragraph shall govern and control; (b) neither the Borrower nor any other Person now or hereafter liable for the payment hereof shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by Applicable Law; (c) any such excess which may have been collected shall be either applied as a credit against the then unpaid principal balance or refunded to the Borrower, at the option of the Lender; and (d) the effective rate of interest shall be automatically reduced to the maximum lawful contract rate allowed under Applicable Law as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under this Note or any other Loan Document that are made for the purpose of determining whether such interest rate exceeds the maximum lawful contract rate, shall be made, to the extent permitted by Applicable Law, by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the Indebtedness evidenced hereby, all interest at any time contracted for, charged or received from the Borrower or otherwise by the Lender in connection with such Indebtedness; provided, however, that if any Applicable Law is amended or the law of the United States of America preempts any Applicable Law, so that it becomes lawful for the Lender to receive a greater interest per annum rate than is presently allowed, the Borrower agrees that, on the effective date of such amendment or preemption, as the case may be, the lawful maximum hereunder shall be increased to the maximum interest per annum rate allowed by the amended state law or the law of the United States of America.

9. Credit Agreement/Collateral. This Note evidences all advances made, interest due and all amounts otherwise owed to Lender under the Credit Agreement, and all amounts due under the Credit Agreement and the other Loan Documents are hereby incorporated herein and are due hereunder. This Note is executed in conjunction with the Credit Agreement and is secured by the liens and security interests created under the Loan Documents. Reference is made to the Credit Agreement for provisions relating to repayment of the indebtedness evidenced by this Note, including mandatory repayment, acceleration following default, late charges, default rate of interest, limitations on interest, restrictions on prepayment, and participation interest (if any). In addition, the Lender and the other Lenders shall enter into the Collateral Agent Agreement under which the Lender shall act as Agent in accordance with the terms thereof.

10. Governing Law. This Note has been executed and delivered in and shall be construed in accordance with and governed by the laws of the State of Delaware and of the United States of America.

11. Waiver of Jury Trial. THE BORROWER HEREBY UNCONDITIONALLY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS NOTE, ANY OF THE RELATED DOCUMENTS, ANY DEALINGS BETWEEN BORROWER AND LENDER RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN LENDER AND BORROWER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT

CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.) THIS WAIVER IS IRREVOCABLE MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS NOTE, ANY RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. IN THE EVENT OF LITIGATION, THIS NOTE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

12. Entire Agreement. This Note and the Credit Agreement and the other Loan Documents constitute the entire agreement of the Borrower and the Lender with respect to the subject matter hereof and supersedes all prior understandings, agreements and representations, express or implied.

13. No Waiver. No delay or failure or forbearance or other act of commission or omission on the part of the Lender in exercising any rights under this Note or the other Loan Documents on default by the Borrower including, without limitation, the Lender's right to accelerate, nor reinstatement of this Note by the Lender after such exercise, shall operate as a waiver of the Lender's right to exercise such right or of any other right under this Note or the other Loan Documents, or as a release of the Borrower, for the same default or any other default, except to the extent such waiver is in writing and signed by the Lender and then only to the extent specifically set forth in writing.

14. Modification. No variation or modification of this Note, or any waiver of any of its provisions or conditions, shall be valid, unless in writing and signed by an authorized representative of the Borrower and the Lender. Any such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

15. Assignment. The Borrower may not delegate or assign its duties or obligations under this Note without the Lender's prior written consent, which the Lender may grant or withhold in its sole discretion; provided, however, that no permitted delegation or assignment of such duties or obligations shall release the Borrower or any guarantor, endorser or surety from any duty or obligations under this Note or the other Loan Documents. The Lender shall have the right to sell, assign, encumber, hypothecate, pledge or otherwise transfer or alienate this Note, either in part or in its entirety, and all or any portion of the Collateral securing repayment of the amount due hereunder, without the consent of the Borrower or the consent of any guarantor, endorser or surety.

16. Binding Effect. Subject to the immediately preceding paragraph, this Note and all of the covenants, promises and agreements contained in it shall be binding on and inure to the benefit of the respective legal and personal representatives, devisees, heirs, successors and assigns of the Borrower and the Lender, provided, however, that the Trustee shall have no personal liability and is liable only in his capacity as Trustee.

17. Attorney's Fees/Costs. The Borrower agrees to promptly reimburse the Lender all costs and expenses, including reasonable accountant and attorneys' fees, paid or incurred by

the Lender in connection with the collection or enforcement of this Note or the other Loan Documents, including defending the priority of such instrument or as a result of foreclosure against any of the collateral or obtaining a deed in lieu of foreclosure or conducting a trustee sale.

18. Severability. Any provision in this Note or the Credit Agreement or the other Loan Documents that is in conflict with any statute, law or applicable rule shall be deemed omitted, modified or altered to conform thereto. Should any provision of this Note be deemed invalid or unenforceable under applicable law, all of the remaining provisions shall remain unchanged and in full force and effect.

19. Consistency with Credit Agreement. In the event of any inconsistency or contradiction in terms between those contained in this Note and those set forth in the Credit Agreement, the terms of the Credit Agreement shall control and govern such inconsistency or contradiction.

Executed as of the date first written above.

BORROWER:

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EDWARD N. CAHN, Solely in His  
Capacity as Trustee of the Bankruptcy  
Estates of The SCO Group, Inc. and SCO  
Operations, Inc., both Delaware  
corporations

EXHIBIT "E"  
LIST AND FORM OF SECURITY DOCUMENTS

[INSERT]

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<b>Input:</b>	
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Document 2	interwovenSite://WORKSITE.HOLLANDHART.COM/Worksite/4682835/15
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<b>Legend:</b>	
<a href="#">Insertion</a>	
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Padding cell	

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Deletions	10
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	22