

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM543450

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	LIEN		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Birmingham Motorcycle Company, LLC		09/07/2016	Limited Liability Company: ALABAMA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	David L. Morgan		
<b>Doing Business As:</b>	Collateral Agent		
<b>Street Address:</b>	3405 4th Avenue South		
<b>City:</b>	Birmingham		
<b>State/Country:</b>	ALABAMA		
<b>Postal Code:</b>	35222		
<b>Entity Type:</b>	INDIVIDUAL: UNITED STATES		
<b>PROPERTY NUMBERS Total: 4</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4463595	M	
<b>Registration Number:</b>	4434076	AMERICAN V4	
<b>Registration Number:</b>	4408355	BABY BLOCK	
<b>Registration Number:</b>	4305465	MOTUS	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2054886244		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	2055218244		
<b>Email:</b>	mdenniston@bradley.com		
<b>Correspondent Name:</b>	Michael S. Denniston		
<b>Address Line 1:</b>	1819 Fifth Avenue North		
<b>Address Line 4:</b>	Birmingham, ALABAMA 35203		
<b>ATTORNEY DOCKET NUMBER:</b>	0B3066-301001		
<b>NAME OF SUBMITTER:</b>	Michael S. Denniston		
<b>SIGNATURE:</b>	/michael s. denniston/		
<b>DATE SIGNED:</b>	10/01/2019		

OP \$115.00 4463595

**Total Attachments: 26**

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## SECOND LIEN SECURITY AGREEMENT

This **Second Lien Security Agreement** (as amended, supplemented, otherwise modified or extended from time to time, this "**Agreement**") is executed as of the \_\_\_\_\_ day of September, 2016, by Birmingham Motorcycle Company, LLC d/b/a Motus Motorcycles, an Alabama limited liability company, as grantor ("**Grantor**"), in favor of David L. Morgan in his capacity as Collateral Agent for the Secured Parties listed on Schedule A ("**Secured Parties**"), as pledgee, assignee and Collateral Agent (in such capacities and together with any successors in such capacities, the "**Collateral Agent**"), and in favor of ServisFirst Bank as the sole existing First Lien Creditor (as hereinafter defined) ("**ServisFirst**").

### *Recitals*

A. Bay Pine Holding, LLC, an Alabama limited liability company which is one of the Secured Parties ("**BPH**") has entered into a guaranty agreement ("**2016-B Guaranty**") for the benefit of ServisFirst, which has extended an additional line of credit to Grantor in the principal amount of \$1,500,000 ("**2016-B Loan**") as provided for by that certain Second Amendment to Amended and Restated Credit Agreement between ServisFirst and Grantor dated of even date herewith.

B. Secured Parties, including BPH (sometimes herein referred to as "**Guarantors**"), have previously entered into guaranty agreements ("**Guaranties**") for the benefit of ServisFirst with respect to the loans and extensions of credit to Grantor in the aggregate principal amount of \$12,275,760. The term "**Guaranties**" includes the 2016-B Guaranty and all prior Guaranties listed on Schedule A.

C. BPH is willing to enter into the 2016-B Guaranty and thus induce ServisFirst to make the 2016-B Loan to Grantor, on certain terms and conditions, one of which is the execution of this Agreement by Grantor in favor of BPH and all other Secured Parties.

D. At the date of this Agreement, none of the Guaranties have been called, and none of the Guarantors has made any payment pursuant to the obligations under the Guaranties, and no Second Lien Obligation (as defined in Section 2) exists as of the date of this Agreement, except contingently.

E. Pursuant to that certain Participation Agreement dated of even date herewith among BPH and the other Secured Parties and Collateral Agent, Secured Parties have appointed Collateral Agent as their sole and exclusive agent to act on their behalf as to all actions necessary or desirable with respect to this Agreement.

### Agreement

**NOW, THEREFORE**, for and in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce BPH to enter into the 2016-B Guaranty, and to secure Grantor's due performance and compliance with all of the terms and conditions required to be performed or complied with by Grantor under this Agreement, Grantor and Collateral Agent hereby agree as follows:

1. **Definitions.** As used in this Agreement the following terms shall have the respective meanings assigned to them as follows:

(a) Each accounting term not defined herein shall have the meaning given to it under generally accepted accounting principles applied on a consistent basis.

(b) Unless otherwise defined in this Agreement, terms used in this Agreement that are defined in the UCC shall have the meanings assigned to them in the UCC. However, if a term is defined in Article 9A of the UCC differently than in another article of the UCC, the term has the meaning specified in Article 9A.

(c) "Collateral" shall have the meaning assigned to that term in Section 3 of this Agreement.

(d) "Debt" shall mean (i) all indebtedness, whether or not represented by bonds, debentures, notes or other securities, for the repayment of borrowed money, (ii) all deferred indebtedness for the payment of the purchase price of property or assets purchased, (iii) all capitalized lease obligations, and (iv) all indebtedness secured by any lien on any property of such person, whether or not indebtedness secured thereby shall have been assumed.

(e) "Distribution" means, with respect to any Debt, obligation or security, (a) any payment or distribution by any person of cash, securities or other property, by set-off or otherwise, on account of such Debt, obligation or security or (b) any redemption, purchase or other acquisition of such indebtedness, obligation or security by any person.

(f) "Enforcement Action" means, with respect to the obligations of a person (an "Obligor") (a) to take from or for the account of the Obligor, by set-off or in any other manner, the whole or any part of any monies which may now or hereafter be owing by such Obligor with respect to such obligations; (b) to sue for payment of, or to initiate or participate with others in any suit, action or proceeding against the Obligor to (i) enforce payment of, or to collect the whole or any part of, such obligations or (ii) commence judicial enforcement of any of the rights and remedies under applicable law or any agreement with the Obligor; (c) to accelerate any Debt owed by the Obligor; (d) to cause the Obligor to honor any redemption or mandatory prepayment obligation under any agreement with the Obligor; (e) to notify the account debtors or to directly collect accounts receivable or other payment rights of the Obligor; or (f) to take any action under the provisions of any state or federal law, including, without limitation, the UCC, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any collateral of the Obligor given as security for the payment of performance of the obligations (and for avoidance of doubt, the Second Lien Creditors acknowledge that, the Grantor is an Obligor of the Second Lien Creditors, the Second Lien Obligations constitute obligations of the Grantor to the Second Lien Creditors, and the Collateral constitutes collateral of the Grantor).

(g) "Event of Default" shall have the meaning assigned to that term in Section 16 of this Agreement.

(h) "First Lien Credit Agreement" means that certain Amended and Restated Credit Agreement dated as of March 6, 2015 between Grantor and ServisFirst, as amended by that certain First Amendment to Amended and Restated Credit Agreement and Other Loan Documents dated as of February 25, 2016, and as further amended by that certain Second Amendment to Amended and Restated Credit Agreement dated as of even date herewith, as the same may be further amended, modified, supplemented or restated and in effect from time to time.

(i) "First Lien Collateral" means any assets of the Grantor with respect to which Grantor grants to the First Lien Creditors a Lien to secure the First Lien Obligations.

(j) "First Lien Creditors" means, collectively, ServisFirst and any other person from time to time which is a holder of a First Lien Obligation.

(k) "First Lien Loan Documents" means the First Lien Credit Agreement and all Loan Documents (as defined in the First Lien Credit Agreement) as the same may be further amended, modified, supplemented or restated and in effect from time to time and, after any refinancing of the First Lien Obligations under the First Lien Loan Documents, the applicable refinancing documents.

(l) "First Lien Obligations" means all obligations, liabilities and indebtedness of every nature of the Grantor from time to time owed to the First Lien Creditors under the First Lien Loan Documents, including, without limitation, the Obligations (as defined in a First Lien Credit Agreement), any debtor-in-possession financing furnished by the First Lien Creditors after the commencement of an Insolvency Proceeding, together with (a) any amendments, modifications, renewals or extensions thereof and (b) any interest, fees and other charges accruing thereon or due or to become due with respect thereto after the commencement of any Insolvency Proceeding, without regard to whether or not such interest, fees and other charges constitute an allowed claim. First Lien Obligations shall be considered to be outstanding whenever any commitment under any First Lien Loan Document is outstanding.

(m) "Insolvency Proceeding" means any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution or assignment for the benefit of creditors, whether under the Bankruptcy Code or any similar federal, state or foreign bankruptcy, insolvency, reorganization, receivership or similar law.

(n) "Lien" means any mortgage, pledge, hypothecation, assignment (as security), encumbrance, lien (statutory or other), charge or other security interest, or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever having substantially the same economic effect as any of the foregoing (including any conditional sale or other title retention agreement and any capital lease).

(o) "Paid in Full" means that, with respect to the First Lien Obligations (a) all of the First Lien Obligations (other than contingent obligations or indemnification obligations for which no underlying claim has been asserted) have been paid, performed or discharged in full (with all First Lien Obligations consisting of monetary or payment obligations having been paid in full in cash); (b) no person has any further right to obtain any loans, letters of credit or other extensions of credit under the First Lien Loan Documents; and (c) any and all letters of credit or similar instruments issued under such documents have been cancelled and returned (or backed by stand-by guarantees or cash collateralized) in accordance with the terms of such documents.

(p) "Second Lien Parties" means, collectively, the Collateral Agent and the Guarantors, as Secured Parties under this Agreement.

(q) "Second Lien Creditors" means the Guarantors.

(r) "Second Lien Loan Documents" means the Guaranties and all agreements, documents and instruments entered into in connection therewith.

(s) "Second Lien Obligations" means all of the obligations of the Grantor to any Second Lien Creditor, whether now existing or hereafter arising and evidenced by or incurred pursuant to the Second Lien Loan Documents.

2. **Obligations Secured.** This Agreement is given to secure and shall secure the following (the "Second Lien Obligations"):

(a) any payment required to be made by a Secured Party to the First Lien Creditors arising from the obligations of Grantor from time to time arising under the First Lien Loan Documents, or otherwise with respect to the due and prompt payment of (i) the principal of and premium, if any, and interest on (including interest accruing during the pendency of any bankruptcy, insolvency, receivership, or other similar proceeding, regardless of whether allowed or allowable in such proceeding), when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment, or otherwise and (ii) all other monetary obligations, including fees, costs, attorneys' fees and disbursements, reimbursement obligations, contract causes of action, expenses, and indemnities, whether primary, secondary, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, fixed, or otherwise (including monetary obligations incurred during the pendency of any Insolvency Proceeding, regardless of whether allowed or allowable in such proceeding), incurred by Guarantor(s) as a result of or with respect of a default by Grantor under the First Lien Loan Documents;

(b) all other covenants, duties, debts, obligations, and liabilities of any kind of Grantor under or in respect of this Agreement, or otherwise made, delivered, or given in connection with the foregoing, in each case whether evidenced by a note or other writing, whether allowed in any bankruptcy, insolvency, receivership, or other similar proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification, or otherwise, and whether primary, secondary, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, fixed, or otherwise; and

(c) all indebtedness, obligations, and liabilities of Grantor to Secured Parties of every kind and description, whether or not presently contemplated by the parties, direct or indirect, otherwise secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising, regardless of how the same arise or by what instrument, agreement, or book account they may be evidenced, or whether evidenced by any instrument, agreement, or book account, including all loans (including any loan by renewal or extension), all indebtedness, all undertakings to take or refrain from taking any action; all indebtedness, liabilities, or obligations owing from Grantor to others that Collateral Agent may have obtained by purchase, negotiation, discount, assignment, or otherwise; and all interest, taxes, fees, charges, expenses, and attorneys' fees chargeable to Grantor or incurred by Collateral Agent under this Agreement or a Guaranty.

(d) No payment or obligation of any nature owed at any time in respect of a Secured Party's equity ownership interest in Grantor constitutes or will be deemed to constitute a "Second Lien Obligation."

3. **Granting Clause.** Grantor does hereby grant, pledge, transfer, sell, assign, convey and deliver to Collateral Agent, and does grant to Collateral Agent a security interest in, all of the right, title and interest of Grantor, in, to and under Grantor's tangible and intangible personal property, rights and fixtures of every kind and nature wherever located, whether now or hereafter from time to time arising or acquired, including all of the following (collectively, the "Collateral"):

(a) all goods (including inventory, equipment, farm products, accessions, and products and masses);

(b) all fixtures;

(c) all accounts (including health care insurance receivables);

(d) all chattel paper (whether tangible or electronic);

- (e) all documents;
- (f) all instruments (including promissory notes);
- (g) all investment property (including certificated securities, uncertificated securities, security entitlements, securities accounts, commodity contracts, and commodity accounts);
- (h) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing);
- (i) all deposit accounts;
- (j) all commercial tort claims;
- (k) all supporting obligations;
- (l) all general intangibles (including tax refunds, payment intangibles, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, software, engineering drawings, service marks, customer lists, goodwill, and licenses, permits, agreements of any kind or nature pursuant to which Grantor may possess, use, sell, lease, license, or dispose of tangible or intangible property of others or pursuant to which others may possess, use, sell, lease, license, or dispose of tangible or intangible property of Grantor);
- (m) all records, books, documents, files, data, information, systems, and software and all equipment, media, devices, means and arrangements to store, maintain, backup, authenticate, access, use, transfer, or copy any records, books, documents, files, data, information, systems, or software; and
- (n) all cash and non-cash proceeds and products of any of the foregoing.

4. **Authorization to File and Filing Fees.** Grantor hereby irrevocably authorizes Collateral Agent, at any time and from time to time, to file with respect to the Collateral one or more financing statements and amendments pursuant to the Uniform Commercial Code in any jurisdiction in form satisfactory to Collateral Agent, and to pay any and all costs of filing the same in any and all public offices where filing is deemed necessary or prudent by Collateral Agent. Grantor agrees to pay any and all costs and fees of filing a termination statement for any financing statement filed in connection with this Agreement. Grantor further agrees that any and all other recording and filing fees, revenue stamps, taxes or other costs, expenses and charges payable in connection with the execution and delivery to Collateral Agent of this Agreement or the other Loan Documents or of the recording, renewal or termination of any financing statements or other instruments requested by Collateral Agent pursuant hereto, shall be borne by Grantor. Grantor shall provide Collateral Agent promptly on request all information that Collateral Agent claims necessary or appropriate to prepare initial financing statements or amendments.

5. **Second Priority Nature of Lien.** Notwithstanding anything herein or in any Second Lien Loan Document to the contrary, the Lien granted to the Collateral Agent pursuant to this Agreement shall be a second priority Lien on and in the First Lien Collateral and the exercise of any right or remedy by the Collateral Agent hereunder is subject and subordinate to the terms of the First Lien Loan Documents, and Grantor and Collateral Agent (for itself and on behalf of the Secured Parties) agree with and for the benefit of the First Lien Creditors as follows:

(a) Until the First Lien Obligations have been Paid in Full, each Second Lien Creditor's Lien on and upon First Lien Collateral shall be and hereby are subordinate for all purposes and in all respects to any Liens of the First Lien Creditors on and upon First Lien Collateral, regardless of the order or time of attachment, or the order, time or manner of perfection, or the order or time of filing or recordation of any document or instrument, or other method of perfecting a Lien. The Lien priorities set forth in the immediately preceding sentence shall not be altered or otherwise affected by any amendment, modification, supplement, extension, renewal, restatement, replacement or refinancing of any of the First Lien Obligations or the Second Lien Obligations, by any failure to perfect the First Lien Creditors' Lien in the First Lien Collateral, the subordination of the First Lien Creditors' Lien on and upon First Lien Collateral, the avoidance or invalidation of the First Lien Creditors' Lien or by any other action or inaction which any First Lien Creditor may take or fail to take with respect to the First Lien Collateral.

(b) Until the First Lien Obligations have been Paid in Full, the First Lien Creditors shall have the right to restrict or permit, or approve or disapprove, the sale, transfer, release or other disposition of the First Lien Collateral or take any action with respect to the First Lien Collateral without any consultation with or the consent of the Second Lien Parties. In the event that the First Lien Creditors release or agree to release any of their Liens in any portion of the First Lien Collateral in connection with the sale or other disposition thereof, or any of the First Lien Collateral is sold or retained pursuant to a foreclosure or similar Enforcement Action, the Collateral Agent shall promptly consent to such sale or other disposition and promptly execute and deliver to the First Lien Creditors such consent to such sale or other disposition, termination statements and releases as the First Lien Creditors shall reasonably request to effect the release of the Liens of the Second Lien Parties in such First Lien Collateral. In the event of any sale, transfer, or other disposition (including a casualty loss or taking through eminent domain) of the First Lien Collateral, the proceeds resulting therefrom (including insurance proceeds) shall be applied in accordance with the terms of the First Lien Loan Documents until such time as the First Lien Obligations have been Paid in Full.

(c) Until the First Lien Obligations have been Paid in Full, the First Lien Creditors shall have the exclusive right to manage, perform and take (or not take) an Enforcement Action with respect to the Grantor or the First Lien Collateral in such order and manner as they may determine in their sole discretion. In that regard, the Collateral Agent shall not (and no Secured Party shall have the right to) take any Enforcement Action with respect to any Second Lien Obligations or the First Lien Collateral, without the prior written consent of the First Lien Creditors. Notwithstanding the foregoing, the Collateral Agent may, subject to Section 5(j) of this Agreement, file and defend proofs of claim against the Grantor in any Insolvency Proceeding involving the Grantor. Any Distributions or other proceeds of any Enforcement Action obtained by the Collateral Agent in violation of the foregoing prohibition shall in any event be held in trust by it for the benefit of the First Lien Creditors and promptly paid or delivered to the First Lien Creditors in the form received until all First Lien Obligations have been Paid in Full. Collateral Agent hereby waives any and all rights to affect the method or challenge the appropriateness of any action by the First Lien Creditors with respect to management, performance and taking (or not taking) any Enforcement Action with respect to the Grantor or the First Lien Collateral. The First Lien Creditors shall not have any liability to any Second Lien Creditor in respect of any Second Lien Creditor's failure to obtain repayment in full of the Second Lien Obligations.

(d) The First Lien Creditors may at any time and from time to time without the consent of or notice to the Second Lien Parties, without incurring liability to any Second Lien Party and without impairing or releasing the obligations of the Second Lien Parties under this Agreement, change the manner or place of payment, or extend the time of payment of, or renew or alter any of the terms of the First Lien Obligations (including any increase in the amount thereof), or amend in any manner any First Lien Loan Document.



(e) Until the First Lien Obligations have been Paid in Full, and notwithstanding anything to the contrary contained in the Second Lien Loan Documents, without the prior written consent of the First Lien Creditors, no amendment, modification, or supplement to the Second Lien Loan Documents shall be effective if such amendment, modification or supplement would add or change any terms in a manner materially adverse to the Grantor or any First Lien Creditor.

(f) The Collateral Agent (for itself and on behalf of the Secured Parties) hereby waives any rights under applicable law to assert the doctrine of marshalling or to otherwise require the First Lien Creditors to marshal any property of the Grantor for the benefit of the Second Lien Creditors.

(g) The Collateral Agent (for itself and on behalf of each Secured Party) hereby (i) waives, to the extent permitted by applicable law, any rights to enjoin or otherwise obtain a judicial or administrative order preventing the First Lien Creditors from taking, or refraining from taking, any action (including any Enforcement Action) with respect to all or any part of the First Lien Collateral, including, without limitation, any right to direct or object to the manner in which the First Lien Creditors apply the proceeds of the First Lien Collateral resulting from the exercise by the First Lien Creditors of rights and remedies under the First Lien Loan Documents and (ii) agrees that the First Lien Creditors have not assumed any obligation to act as the agent for the Second Lien Parties with respect to the First Lien Collateral. The First Lien Creditors shall have the exclusive right to enforce rights and exercise remedies with respect to the First Lien Collateral until the First Lien Obligations have been Paid in Full. In exercising rights and remedies with respect to the First Lien Collateral, the First Lien Creditors may enforce the provisions of the First Lien Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in their sole discretion. Such exercise and enforcement shall include, without limitation, the rights to sell or otherwise dispose of First Lien Collateral, to incur expenses in connection with such sale or disposition and to exercise all the rights and remedies of a secured party under the UCC. In conducting any public or private sale under the UCC, the First Lien Creditors shall give the Collateral Agent written notice of such sale; provided, however, that 10 (ten) days' notice shall be deemed to be commercially reasonable notice.

(h) The First Lien Creditors shall have no duty to protect or preserve any rights pertaining to any of the Collateral in its possession and the First Lien Creditors shall not have any liability to the Collateral Agent or any other Second Lien Creditor for any claims and liabilities at any time arising with respect to the Collateral in its possession.

(i) This Agreement, which the parties hereto expressly acknowledge is a "subordination agreement" under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of an Insolvency Proceeding. All references in this Agreement to the Grantor shall include the Grantor as a debtor-in-possession and any receiver or trustee for the Grantor in any Insolvency Proceeding.

(j) In the event of any Insolvency Proceeding involving the Grantor:

(i) All First Lien Obligations shall first be Paid in Full and all commitments to lend under a First Lien Loan Document shall be terminated before any Distribution, whether in cash, securities or other property, shall be made to the Collateral Agent for the benefit of the Second Lien Parties on account of any Second Lien Obligations.

(ii) Any Distribution, whether in cash, securities or other property which would otherwise, but for the terms hereof, be payable or deliverable in respect of the Second Lien Obligations shall be delivered to the First Lien Creditors, and applied in accordance with the terms of the First Lien Loan Documents, and the Collateral Agent (for itself and on behalf of each Secured Party)

irrevocably authorizes, empowers, and directs any debtor, debtor-in-possession, receiver, trustee, liquidator, custodian, conservator or other person having authority, to pay or otherwise deliver all such Distributions to the First Lien Creditors. The Collateral Agent also irrevocably authorizes and empowers the First Lien Creditors, in the name of the Second Lien Parties, to demand, sue for, collect and receive any and all such Distributions.

(iii) The Collateral Agent (for itself and on behalf of each Secured Party) agrees:

(1) not to initiate, prosecute or participate in any claim, action or other proceeding challenging the enforceability, validity, perfection or priority of any portion of the First Lien Obligations or any Liens securing any portion of the First Lien Obligations;

(2) that the First Lien Creditors may consent to the use of cash collateral or provide debtor-in-possession financing to the Grantor on such terms and conditions and in such amounts as the First Lien Creditors, in their sole discretion, may decide and, in connection therewith, the Grantor may grant to the First Lien Creditors Liens upon all of the property of the Grantor, which Liens (i) shall secure payment of all First Lien Obligations owing to the First Lien Creditors (whether such First Lien Obligations arose prior to the commencement of any Insolvency Proceeding or at any time thereafter) and all other financing provided by the First Lien Creditors during such Insolvency Proceeding and (ii) shall be superior in priority to the Liens in favor of the Second Lien Parties on and upon property of the Grantor;

(3) that it will not object to or oppose any such cash collateral usage or debtor-in-possession financing or any sale or other disposition of any property securing all of any part of the First Lien Obligations free and clear of Liens or other claims of any Second Lien Creditor under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code, if the First Lien Creditors have consented to such sale or disposition;

(4) not to assert any right it may have to "adequate protection" of the Second Lien Parties' interest in any Collateral in any Insolvency Proceeding and agree that it will not seek to have the automatic stay lifted with respect to any First Lien Collateral without the prior written consent of the First Lien Creditors; *provided that*, the First Lien Creditors will not object to any request by the Collateral Agent for adequate protection replacement liens on all pre-petition and post-petition property of the Grantor upon which the First Lien Creditors are also granted adequate protection replacement liens, with such liens in favor of the Second Lien Parties being subject in all respects to this Agreement; *provided, further that*, other than such replacement liens the Collateral Agent will not seek any other form of adequate protection. The Collateral Agent waives any claim it may now or hereafter have against any First Lien Creditor arising out of the election of any First Lien Creditor of the application of Section 1111(b)(2) of the Bankruptcy Code or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with any Insolvency Proceeding. The Collateral Agent agrees that it will not provide, or offer to provide, any debtor-in-possession financing to the Grantor without the prior written consent of the First Lien Creditors;

(5) to execute, verify, deliver, and file any proofs of claim in respect of the Second Lien Obligations reasonably requested by the First Lien Creditors in connection with any Insolvency Proceeding and hereby irrevocably authorize the First Lien Creditors to file such proofs of claim upon the failure of the Collateral Agent to do so prior to three (3) business days before the expiration of the time to file any such proof of claim; *provided, however*, that the First Lien Creditors shall not be permitted to vote such claim and all voting rights with respect thereto shall be retained by the Collateral Agent;

(6) not to vote for any plan of reorganization that does not provide for the prior payment in full of the First Lien Obligations or otherwise vote their claims or interests in any Insolvency Proceeding (including voting for, or supporting, confirmation of any plans of reorganization) in a manner that would be inconsistent with intents and purposes of this Agreement. For the avoidance of doubt, the First Lien Creditors shall have no affirmative obligation to file any proof of claim on behalf of the Second Lien Parties.

(7) That the First Lien Obligations shall continue to be treated as First Lien Obligations and the provisions of this Agreement shall continue to govern the relative rights and priorities of the First Lien Creditors and the Second Lien Creditors even if all or part of the First Lien Obligations or the Liens securing the First Lien Obligations are subordinated, set aside, avoided, invalidated, or disallowed in connection with any Insolvency Proceeding. This Agreement shall be reinstated if at any time any payment of any of the First Lien Obligations is rescinded or must otherwise be returned by any holder of First Lien Obligations or any representative of such holder.

(8) that (i) the grants of Liens pursuant to the First Lien Loan Documents and the Second Lien Loan Documents constitute separate and distinct grants of Liens and (ii) the First Lien Obligations and the Second Lien Obligations are fundamentally different from one another and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency Proceeding of the Grantor, and to further effectuate the intent of the parties, if it is determined by a court of competent jurisdiction that the claims of the First Lien Creditors and the Second Lien Creditors in respect of any assets of Grantor constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the First Lien Creditors shall be entitled to receive, in addition to amounts distributed to them from, or in respect of, the First Lien Collateral in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, costs and other charges, irrespective of whether a claim for such amounts is allowed or allowable in such liquidation or Insolvency Proceeding, before any Distribution from, or in respect of, any such First Lien Collateral is made in respect of the claims held by any Second Lien Creditor. The Collateral Agent hereby agrees to turn over to the First Lien Creditors amounts otherwise received or receivable by it to the extent necessary to effectuate the intent of the preceding, regardless of whether such turnover has the effect of reducing the claim or recovery of any Second Lien Creditor.

(k) In the event of any conflict between any term, covenant, or condition of this Agreement and any term, covenant or condition of the Second Lien Loan Documents, the provisions of this Agreement shall control and govern.

(l) This is a continuing agreement of subordination and the First Lien Creditors may continue, at any time and without notice to the Second Lien Parties, to extend credit or other financial accommodations and loan monies to, or for the benefit of, the Grantor on the faith hereof. This Agreement shall remain in full force and effect until the First Lien Obligations have been Paid in Full, after which this Agreement shall terminate without further action on the part of the parties hereto.

#### 6. Grantor's Representations, Warranties, Covenants and Agreements.

Grantor represents, warrants, covenants and agrees with Collateral Agent, and its successors and assigns, that:

(a) Without prior written notice to Collateral Agent, Grantor shall not (i) change its name, place of business (or, if more than one, its chief executive office), its mailing address, or its federal tax identification number, or (ii) change its type of organization, jurisdiction or other legal structure.

(b) Grantor is the lawful and absolute owner of, and has good, indefeasible and merchantable title to, the Collateral, free and clear of all liens, claims, security interests and encumbrances except those existing under the First Lien Loan Documents, and has a good right to sell, assign, convey and grant a security interest in the Collateral subject to the written consent of ServisFirst. Other than the financing statements filed as of the date hereof and listed on Schedule B, no financing statement or security interest is on file in any public office with respect to any Collateral. Until all the Obligations are paid in full, or the Guaranties are released or otherwise discharged, Grantor shall not assign, transfer, pledge or grant to others a security interest in any Collateral, nor permit any lien, encumbrance or security interest (except that of Collateral Agent and as listed on Schedule B) to attach to any Collateral, or any levy to be made thereon or any financing statement or security interest (except that of Collateral Agent and as listed on Schedule B) to be on file in any public office with respect to any Collateral except with the written consent of Collateral Agent, and Grantor will forever defend the title of the Collateral unto Collateral Agent, and its successors and assigns, against the claims of all persons whomsoever, whether lawful or unlawful.

(c) Grantor shall at all times keep accurate and complete records of the Collateral, and Collateral Agent or its agents shall have the right to call at Grantor's place of business (or any other place where any of Grantor's records with respect to the Collateral are located) at intervals to be determined by Collateral Agent, upon reasonable notice and during Grantor's regular business hours, and without hindrance or delay, to inspect and examine Grantor's records with respect to the Collateral and to inspect, audit, check and make abstracts from the books, records, journals, orders, receipts, correspondence and other data relating to the Collateral or to any other transactions between the parties hereto.

(d) The Collateral shall be kept at 500 28<sup>th</sup> Street South, Birmingham, Alabama and said location shall not be moved without prior notice to Collateral Agent.

(e) Grantor will not allow any of the Collateral that is not a fixture on the date of this Agreement to become attached to any real estate in such manner as to become a fixture or a part thereof without first furnishing to Collateral Agent a description of such real estate and the names of the record owners thereof, execute such additional financing statements and other documents as Collateral Agent may require, obtain from the owners of such real estate and the holders of any liens thereon such subordination agreements and other documents as Collateral Agent may request, and take such other actions as Collateral Agent may deem necessary or desirable in order to preserve and perfect Collateral Agent's security interest therein as a perfected security interest.

(f) Grantor shall pay when due all taxes, assessments, rents and other charges levied or assessed upon the Collateral and all other claims that are or may become liens against the Collateral, or any part thereof. If such taxes, assessments, rents or other charges remain unpaid after the date fixed for the payment of the same, or if any lien shall be claimed which in the opinion of Collateral Agent might possibly create a valid obligation having priority over the rights in the Collateral granted to Collateral Agent herein, Collateral Agent may (but shall not be required to), without notice to Grantor, pay such taxes, rents, assessments, charges or claims, and the amounts thereof shall be added to the Obligations hereby secured and shall bear interest at the rate of 4% per annum or the highest rate permitted by law, whichever is less.

(g) If requested by Collateral Agent, Grantor shall make proper entries in its books disclosing the assignment of the Collateral to Collateral Agent, and Grantor shall segregate its records concerning the Collateral and mark the same with Collateral Agent's name or in such other manner as shall be satisfactory to Collateral Agent.

(h) Any accountants at any time acting for Grantor may give Collateral Agent any information that Collateral Agent may request at any time regarding the financial affairs of Grantor and may furnish Collateral Agent with copies of any documents in their possession related thereto.

(i) Grantor shall furnish Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Collateral Agent may reasonably request, all in reasonable detail.

(j) Grantor shall obtain a waiver of any lien claims or rights which any owners or mortgagees of any real estate (or of any possessory interest therein) on which the Collateral, or any part thereof, is now or hereafter may be located, may have with respect to the Collateral, or shall secure an agreement wherein such persons subordinate their rights, titles, interests and lien claims to Collateral Agent's security interest in the Collateral.

(k) Promptly after Grantor's learning thereof, Grantor shall inform Collateral Agent in writing of any material delay or default in Grantor's performance of any of its obligations to any lender, any assertion of any material claims, offsets or counterclaims by any First Lien Creditor, any material adverse information relating to the financial condition of any Grantor, or any other material adverse change in any of Grantor's representations, warranties, covenants and agreements under this Agreement.

(l) Grantor shall provide Collateral Agent with copies of all agreements between Grantor and any warehouse at which any Collateral may, from time to time, be kept and all lease or similar agreements between Grantor and any other person, whether Grantor is lessor or lessee thereunder.

(m) If any account arises out of a contract with the United States of America, or any department, agency, subdivision or instrumentality thereof, Grantor shall promptly notify Collateral Agent thereof in writing and execute any instruments and take any other action required or requested by Collateral Agent to perfect Collateral Agent's security interest in such account under the provisions of the Federal Assignment of Claims Act.

(n) Grantor has no commercial tort claims.

(o) No Collateral is now, nor at any time hereafter shall be, stored with a bailee, warehouseman or similar party without Collateral Agent's prior written consent, and if Collateral Agent gives such consent, Grantor shall concurrently therewith cause any such bailee, warehouseman or similar party to issue and deliver to Collateral Agent, in form and substance acceptable to Collateral Agent, warehouse receipts therefor in Collateral Agent's name.

7. **Survival of Warranties, Representations, Covenants and Agreements.** Grantor covenants, agrees, warrants and represents to Collateral Agent that all representations, warranties, covenants and agreements of Grantor contained in this Agreement shall be true at the time of Grantor's execution of this Agreement and shall survive the execution, delivery and acceptance thereof by the parties hereto and the closing of the transactions described herein or related hereto. Grantor and Collateral Agent expressly agree that any misrepresentation or breach of any representation, warranty, covenant or agreement whatsoever contained in this Agreement shall be deemed material.

8. **Perfection by Control.** If Grantor holds or acquires any Collateral in which a security interest is perfected by control, at Collateral Agent's request, from time to time, Grantor, at Grantor's sole cost and expense, shall immediately take all actions as may be requested by Collateral Agent to perfect the security interest of Collateral Agent in the Collateral, including, without limitation, with respect to

Collateral over which control may be obtained within the meaning of Sections 8-106, 9A-104, 9A-105, 9A-106, and 9A-107 of the UCC, Grantor shall, at Grantor's sole cost and expense, immediately take all actions as may be requested from time to time by Collateral Agent so that control of the Collateral is obtained and at all times held by Collateral Agent.

9. **Collateral by Perfected Possession.** Immediately upon Grantor's receipt of an instrument, certificated security, tangible chattel paper or tangible negotiable document then Grantor shall immediately endorse, assign and deliver it to Collateral Agent, together with appropriate endorsements, assignments or other records of transfer duly executed in blank and in form and substance acceptable to Collateral Agent, from time to time.

10. **Collateral Agent's Performance.** If Grantor fails to perform any obligation in this Agreement, Collateral Agent may, at any time or times hereafter, in its sole discretion and without waiving or releasing any obligation of Grantor or any default or Event of Default, perform the obligation and all sums paid by Collateral Agent in respect thereof and all costs, fees and expenses, including, but not limited to, reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be additional Obligations of Grantor to Collateral Agent secured by the Collateral, shall be payable on demand, and shall bear interest at the rate of 4% per annum or at the highest rate permitted by law, whichever is less.

11. **Collection of Accounts; Segregation of Proceeds, Etc.** Upon demand by Collateral Agent, proceeds of Collateral received by Grantor shall be (a) held in trust by Grantor for Collateral Agent separate and apart from and not commingled with any property of Grantor, (b) kept capable of identification as the property of Collateral Agent, and (c) delivered not less often than daily (or at such other intervals as may be mutually agreed upon in writing) to Collateral Agent in the identical form received, with appropriate endorsements and accompanied by a report prepared by Grantor in such form as Collateral Agent shall require. In the event of any default or Event of Default, upon Collateral Agent's request, Grantor shall give written notice to account debtors of Collateral Agent's security interest in the accounts and make payments on the accounts directly to Collateral Agent. Collateral Agent may, without notice to Grantor, give such written notice to account debtors.

12. **Attorney-in-Fact.** Grantor hereby constitutes and appoints Collateral Agent, or any other person whom Collateral Agent may designate, as Grantor's attorney-in-fact, at Grantor's sole cost and expense, to exercise at any time (without notice to Grantor and irrespective of whether any Event of Default shall have occurred hereunder) all or any of the following powers which, being coupled with an interest, shall be irrevocable until Collateral Agent's security interest shall have been terminated as set forth in Section 21 of this Agreement:

(a) to sell, transfer, pledge or otherwise deal with the Collateral as though Collateral Agent was the owner of the Collateral and to do all acts or things which Collateral Agent deems necessary or appropriate to realize upon, protect or preserve the Collateral;

(b) to receive, take, endorse, assign and deliver in Collateral Agent's name or in the name of Grantor any and all checks, notes, drafts and other instruments relating to accounts;

(c) to receive, open and dispose of all mail addressed to Grantor and to notify postal authorities to change the address for the delivery thereof to such address as Collateral Agent may designate;

(d) to give account debtors notice of Collateral Agent's interest in the accounts and to demand and receive from such account debtors at any time, in the name of Collateral Agent or of

Grantor or of the designee of Collateral Agent, information concerning the accounts and the amounts owing thereon;

(e) to notify purchasers to make payments on the accounts directly to Collateral Agent or to a lock box designated by Collateral Agent; and

(f) to take or to bring, in the name of Collateral Agent or in the name of Grantor, all steps, action, suits or proceedings deemed by Collateral Agent necessary or desirable to effect collection of the accounts.

All acts of such attorney-in-fact or designee are hereby ratified and approved by Grantor, and said attorney or designee shall not be liable for any acts or omissions nor for any error of judgment or mistake of fact or law.

13. **Insurance.** Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Collateral Agent may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Collateral Agent and issued by a company or companies reasonable acceptable to Collateral Agent. Grantor, upon request by Collateral Agent, will deliver to Collateral Agent from time to time the policies or certificates of insurance in form satisfactory to Collateral Agent, including stipulations that Grantor shall maintain insurance on its property, business and operations in such amounts and with such companies as are satisfactory to Collateral Agent. In connection with all policies covering assets in which Collateral Agent holds or is offered a security interest, Grantor will provide Collateral Agent with such loss payable or other endorsements as Collateral Agent may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Collateral Agent may (but shall not be obligated to) obtain such insurance as Collateral Agent deems appropriate, including, if Collateral Agent so chooses, "single interest insurance," which will cover only Collateral Agent's interest in the Collateral.

14. **Care of Collateral; Notice of Loss, Etc.** Grantor shall: (a) take good care of the Collateral; (b) not commit or permit any waste thereon; (c) keep the same in good repair; (d) at all times maintain the same in as good condition as it is now in, reasonable wear and tear and insured casualty loss excepted; (e) not use, or permit the Collateral to be used, in violation of any law; and (f) notify Collateral Agent immediately in writing of any event causing material loss or depreciation in value of any of the Collateral exceeding \$20,000 in amount and of the amount of such loss or depreciation (other than depreciation in the Collateral resulting from ordinary wear and tear).

15. **Use of Collateral.** Grantor agrees (a) to perform or comply with the terms of any lease covering the premises where the Collateral is located and all laws of any governmental authority concerning such premises or the conduct of business therein, (b) not to conceal or abandon the Collateral and (c) not to lease or hire any of the Collateral to any person or permit the same to be leased or used for hire, or enter into any future leases that Collateral Agent, in its sole discretion, does not approve in advance.

16. **Events of Default.** As used in this Agreement, the terms "default" or "Event of Default" shall mean the occurrence or happening of any one or more of the following events, circumstances or conditions:

(a) Any representation or warranty made in this Agreement shall prove to be false or misleading in any material respect; or





(b) Violation of, or default in the observance or performance of, any of the Obligations or of any term, agreement, covenant, condition or stipulation contained or referred to in this Agreement; or

(c) Default in the due payment of the principal of or any interest on any of the Obligations, or any part thereof, as and when due and payable; or

(d) Any financial statement, report, schedule, certificate, statement or other instrument or document heretofore, now or hereafter made or furnished to Collateral Agent by or on behalf of Grantor shall prove to be false or misleading in any material respect when given; or

(e) Default shall be made with respect to any Debt of Grantor or the performance of any other obligation incurred in connection with any such Debt of Grantor; or

(f) The occurrence of any event (including, but not limited to, a default) which results in the acceleration of the maturity of any Debt of Grantor or any such Debt shall not be paid when due; or

(g) Collateral Agent at any time in good faith deems itself insecure for any reason with respect to any of the Obligations; or

(h) Grantor dissolves if a corporation, partnership or limited liability company, or if a partnership, any general partner becomes insolvent, dies or is replaced or withdraws or if a corporation any principal officer thereof becomes insolvent, dies or ceases to be employed by Grantor; or

(i) Default shall be made in the due observance or fulfillment of any other covenant, condition, representation, warranty or agreement on the part of Grantor to be observed or performed pursuant to this Agreement; or

(j) The loss, theft, damage, sale (other than inventory in the ordinary course of Grantor's business), destruction or encumbrance of the Collateral, or the sale or encumbrance or the making or filing of any lien, levy, seizure or attachment thereof or thereon; or

(k) The insolvency of Grantor; or

(l) Grantor shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of or for itself or any of its properties or assets, (ii) fail or admit in writing its inability to pay debts generally as they become due, (iii) make a general assignment for the benefit of creditors; (iv) suffer or permit an order for relief to be entered against it in any proceeding under the federal bankruptcy code or any other similar law or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law, or an answer admitting the material allegations of a petition against it in any proceeding under any such law, or if corporate action should be taken by Grantor for the purpose of effecting any of the foregoing; or

(m) A petition shall be filed, in any court of competent jurisdiction, seeking bankruptcy, reorganization, rearrangement, dissolution or liquidation of Grantor, or of all or a substantial part of Grantor's properties or assets or seeking any other relief under any law of the type referred to in clause (v) of Section (l) above against Grantor or the appointment of a receiver, trustee, liquidator or other custodian of Grantor, or of all or a substantial part of Grantor's properties or assets, without the



application, approval or consent of such party, and such petition shall not have been dismissed within ninety (90) days after the filing thereof; or

(n) The filing or recording of any federal or other tax lien against Grantor that is not discharged within thirty (30) days or any levy or lien on or against the Collateral; or

(o) Any final judgment or judgments for the payment of money in excess of an aggregate of \$50,000 shall be rendered against Grantor and not effectively stayed within thirty (30) days from the date of entry.

17. **Remedies on Default.** If an Event of Default occurs, Collateral Agent shall have all the rights and remedies of a Collateral Agent upon default under the Uniform Commercial Code, including the right to take possession of the Collateral, as well as all rights and remedies under any other applicable law and under the terms of this Agreement, all of which shall be cumulative. With respect to such rights and remedies:

(a) Written notice, when required by law, sent to Grantor as provided below at least ten (10) calendar days (counting the day of sending) before the date of a proposed disposition of the Collateral is fair and reasonable notice to Grantor.

(b) Grantor agrees to reimburse Collateral Agent for any reasonable expense incurred by Collateral Agent in protecting or enforcing its rights under this Agreement, including, without limitation, all expenses of disposing of the Collateral, together with court costs and reasonable attorneys' fees. After deduction of such expenses, Collateral Agent may apply the proceeds of the disposition of the Collateral to any one or more of the Obligations, as well as to any other indebtedness, obligation or liability of Grantor to Collateral Agent secured hereby, in such order and amounts as Collateral Agent elects.

(c) Collateral Agent shall not be obligated to resort to any other collateral or security now held or hereafter given to Collateral Agent to secure the Obligations or to seek recovery from Grantor of said debts, but may, upon default, at Collateral Agent's sole election, proceed to enforce its rights as to the Collateral hereunder.

(d) Collateral Agent may require Grantor, at Collateral Agent's request, to assemble all or part of the Collateral at one or more locations selected by Collateral Agent.

(e) Collateral Agent may sign or endorse the name of Grantor upon any chattel paper, document, instrument, invoice, freight bill, bill of lading, warehouse receipt, title certificate or similar document or agreement relating to or included in the Collateral.

18. **Waiver of Hearing.** Grantor waives all rights it may have to a hearing prior to Collateral Agent enforcing any of Collateral Agent's rights, including Collateral Agent's right to take possession of the Collateral. Grantor hereby waives any requirement for bond or surety prior to Collateral Agent taking possession of the Collateral.

19. **Non-Waiver.** It is agreed that no delay in exercising any right or option given or granted hereby to Collateral Agent shall be construed as a waiver thereof; nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. Collateral Agent may permit Grantor to remedy any default without waiving the default so remedied, and Collateral Agent may waive any default without waiving any other subsequent or prior default by Grantor. It is further agreed that if any default occurs under the terms of this Agreement, Collateral Agent

shall have the right, without further notice to Grantor, to declare the entire unpaid balance of the Obligations, with accrued interest, immediately due and payable, and Collateral Agent shall be authorized, at its election, to proceed to enforce its rights and remedies upon default under the terms of this Agreement.

20. **Repossession of the Collateral; Care and Custody of the Collateral; Etc.** Grantor hereby expressly and irrevocably consents to, and to the extent that Grantor may lawfully do so, invites Collateral Agent and its agents to come upon any premises on which the Collateral, or any part thereof, is now or hereafter located for any and all purposes related to the Collateral, including, without limitation, repossession of the Collateral, or any part thereof. To the extent that Grantor may lawfully do so, Grantor further covenants and warrants that (a) any entry by Collateral Agent and its agents upon such premises for the purpose of repossessing the Collateral, or any part thereof, shall not be a trespass upon such premises, and (b) any such repossession shall not constitute conversion of the Collateral or any part thereof. Grantor further agrees to indemnify and hold Collateral Agent harmless against, and hereby release Collateral Agent from any actions, costs, liabilities or expenses arising directly, indirectly or remotely from any attempt to enter such premises and repossess the Collateral, or any part thereof. Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if it takes such reasonable actions for that purpose as Grantor shall request in writing, but Collateral Agent shall have sole power to determine whether such actions are reasonable. Any omission to do any act not requested by Grantor shall not be deemed a failure to exercise reasonable care. Grantor shall at all times be responsible for the preservation of the Collateral and shall be liable for any failure to realize upon, or to exercise any right or power with respect to, the Collateral, or for any delay in so doing, whether or not the Collateral is in Grantor's possession. Grantor hereby consents to the appointment of a receiver for the Collateral upon the occurrence of an Event of Default.

21. **Waiver of Exemption, Etc.** As against the Obligations, Grantor waives all rights of exemption under the constitution and laws of the state of Alabama or any other jurisdiction and agrees to pay all costs of collection and enforcement hereof, and reasonable attorneys' fees, if the Obligations are not paid at maturity or other default occurs hereunder.

22. **Successors and Assigns.** All covenants and agreements herein made by the Collateral Agent shall bind each and every Second Lien Party and the successors and assigns of such Second Lien Party, and every option, right and privilege herein reserved or granted to Collateral Agent or the First Lien Creditors shall inure to the benefit of and may be exercised by Collateral Agent and the First Lien Creditors and their respective successors and assigns. To the extent permitted under the First Lien Loan Documents, the First Lien Creditors may, from time to time, without notice to the Second Lien Parties, assign or transfer any or all of the First Lien Obligations or any interest therein to any person and, notwithstanding any such assignment or transfer, or any subsequent assignment or transfer, the First Lien Obligations shall, subject to the terms hereof, be and remain First Lien Obligations for purposes of this Agreement, and every assignee or transferee of any of the First Lien Obligations or of any interest therein shall, to the extent of the interest of such assignee or transferee in the First Lien Obligations, be entitled to rely upon and be the third party beneficiary of the subordination provided under this Agreement and shall be entitled to enforce the terms and provisions hereof to the same extent as if such assignee or transferee were initially a party hereto. The Collateral Agent further acknowledges that this Agreement will inure to the benefit of any third person who refinances or succeeds to or replaces any or all of the First Lien Obligations, whether such successor financing or replacement occurs by transfer, assignment or repayment without the necessity of any further writing; provided, however, the Collateral Agent agrees (for itself and on behalf of the Secured Parties), upon the request of such third person, to execute and deliver an agreement with such person containing terms substantially identical to those contained herein (subject to changing names of parties, documents and addresses, as appropriate). Grantor hereby acknowledges receipt of a duplicate copy of this instrument.

23. **Governing Law.** This Agreement shall be governed and construed by the laws of the State of Alabama, without regard to conflict of laws principles except as required by mandatory provisions of law and except that the validity and perfection of the liens granted hereunder, or remedies hereunder, are governed by the laws of a jurisdiction other than the State of Alabama.

24. **Modification, Etc.** No modification, amendment or waiver of any provision of this Agreement, nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by Collateral Agent and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Grantor in any case shall entitle Grantor to any other or further notice or demand in the same, similar or other circumstances.

25. **Further Assurances.** Grantor will take such action as may be necessary to protect and maintain a continuously perfected security interest of Collateral Agent in the Collateral, including, without limitation, the filing of such financing statements and other instruments in such detail as, in the opinion of Collateral Agent and its counsel, may be necessary to create or maintain a perfected security interest therein.

26. **Jurisdiction, Service, Etc.** Grantor irrevocably (a) acknowledges that this Agreement will be accepted by Collateral Agent and performed by Grantor in the State of Alabama; (b) submits to the jurisdiction of each state or federal court sitting in Jefferson County, Alabama (collectively, the "Courts") over any suit, action, or proceeding arising out of or relating to this Agreement (individually, an "Agreement Action"); (c) waives, to the fullest extent permitted by law, any objection or defense that Grantor may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum, or any similar matter in any Agreement Action brought in any of the Courts; (d) agrees that final judgment in any Agreement Action brought in any of the Courts shall be conclusive and binding upon Grantor and may be enforced in any other court to the jurisdiction of which Grantor is subject, by a suit upon such judgment; (e) consents to the service of process on Grantor in any Agreement Action by the mailing of a copy thereof by registered or certified mail, postage prepaid, to Grantor at Grantor's address designated in or pursuant to Section 17; and (f) agrees that service in accordance with Section 26(e) shall in every respect be effective and binding on Grantor to the same extent as though served on Grantor in person by a person duly authorized to service such process. Nothing in this Section 26 shall limit or restrict Collateral Agent's right to serve process or bring Agreement Actions in manners and in courts otherwise than as herein provided.

27. **Notices.**

(a) All notices and other communications provided for herein shall be made in writing and mailed by certified or registered mail, delivered by hand or overnight courier service, or sent by email as follows:

If to Grantor:

Birmingham Motorcycle Company, LLC  
500 28<sup>th</sup> Street South  
Birmingham, Alabama 35233  
Attention: Lee A. Conn and David Morgan  
E-mail: [lee@motusmotorcycles.com](mailto:lee@motusmotorcycles.com)

with a copy to:

Carolyn L. Duncan  
Cabaniss, Johnston, Gardner, Dumas & O'Neal LLP  
Suite 700  
2001 Park Place North  
Birmingham, Alabama 35203  
E-mail: [eld@cabaniss.com](mailto:eld@cabaniss.com)

If to Collateral Agent or any Secured Party:

David L. Morgan  
c/o Mayer Electric  
3405 4<sup>th</sup> Avenue South  
Birmingham, Alabama 35222  
E-mail: [dmorgan@mayerelectric.com](mailto:dmorgan@mayerelectric.com)

If to First Lien Creditors:

ServisFirst Bank  
850 Shades Creek Parkway, Suite 200  
Birmingham, Alabama 35209  
Attention: Layne B. Held  
E-mail: [lheld@servisfirstbank.com](mailto:lheld@servisfirstbank.com)

with a copy to:

Ray D. Gibbons, Esq.  
Gibbons Law LLC  
100 Corporate Parkway, Suite 125  
Birmingham, Alabama 35242  
E-mail: [rgibbons@gibbonslawllc.com](mailto:rgibbons@gibbonslawllc.com)

(b) Notices and other communications (i) mailed by certified or registered mail or sent by hand or overnight courier service shall be deemed to have been given when received; and (ii) sent by e-mail shall be deemed given upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided that*, in the case of clause (ii), if such e-mail is not sent during the recipient's normal business hours, such e-mail shall be deemed to have been given at the recipient's opening of business on the next business day.

(c) Any party hereto may change its address or email address for notices and other communications hereunder by notice to the other parties hereto.

28. **Counterparts; Integration; Effectiveness; Electronic Execution.** This Agreement and any amendments, waivers, consents or supplements hereto may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties with respect to the subject matter hereof and supersedes all previous agreements and understandings, oral or written, with respect thereto. This Agreement shall become effective when it shall

IN WITNESS WHEREOF, the Grantor has caused this Agreement to be executed in its name and on its behalf by its duly authorized officer on the day and year first above written.

Birmingham Motorcycle Company, LLC

By: [Signature]  
Lee A. Conn  
Its President

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Lee A. Conn, whose name as an officer of Birmingham Motorcycle Company, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

GIVEN under my hand and official seal this the 7<sup>th</sup> day of SEPTEMBER, 2016.

[Signature]  
Notary Public  
My Commission Expires: 03-03-2018

SEAL

MY COMMISSION EXPIRES  
March 3, 2018

have been executed by the Grantor, the Secured Parties, the Collateral Agent, and ServisFirst and when the Collateral Agent and ServisFirst shall have received counterparts hereof that together bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

29. **Specific Performance.** The First Lien Creditors may demand specific performance of this Agreement. The Collateral Agent (for itself and on behalf of each Secured Party) hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by any First Lien Creditor.

30. **Expenses.** In the event that the First Lien Creditors undertake any action that is reasonably necessary in order to enforce the provisions of this Agreement (whether or not suit is commenced), the Grantor and Secured Parties jointly and severally be responsible and shall pay all reasonable costs and expenses incurred by the First Lien Creditors in connection therewith, including, without limitation, reasonable attorneys' fees.

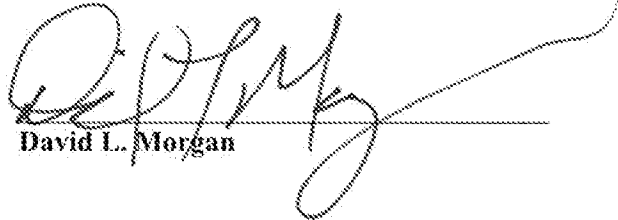
31. **Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY. EACH PARTY HERETO (A) CERTIFIES THAT NO AGENT, ATTORNEY, REPRESENTATIVE OR ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF LITIGATION, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

*[Signature Pages Follow]*



[Signature Page for Second Lien Security Agreement - Collateral Agent]

IN WITNESS WHEREOF, the Collateral Agent has executed this Agreement on the day and year first above written.

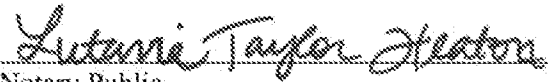
  
\_\_\_\_\_  
David L. Morgan

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that David L. Morgan, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal this the 7<sup>th</sup> day of SEPTEMBER, 2016.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 03-03-2018

SEAL

MY COMMISSION EXPIRES:  
March 3, 2018

**Consent of ServisFirst Bank**

ServisFirst Bank hereby approves and consents to the foregoing Second Lien Security Agreement, and confirms that the Lien therein granted constitutes a "Permitted Lien" under and as defined in Section 1.1 of the Credit Agreement.

**SERVISFIRST BANK,**  
an Alabama banking corporation

By: .....

Name: .....

Its: .....

SCHEDULE A

Listing of Secured Parties/Guarantors and Guaranties

(Attached)

SCHEDULE A TO SECOND LIEN SECURITY AGREEMENT

Loans

Guarantors, as Secured Parties	ServisFirst Line of Credit 2016-B <sup>1</sup>	ServisFirst Line of Credit <sup>2</sup>	ServisFirst Term Loan <sup>3</sup>	Letter of credit - lease buildout <sup>4</sup>	Letter of credit - dealer floorplan <sup>5</sup>	Total Guaranteed Amounts	% of Total Guaranties
Charles A. Collat	\$ -	\$ 6,162,500.00	\$ 692,519.04	\$ -	\$ -	\$ 6,855,019.04	48.79%
Bay Pine Holding, LLC	1,500,000.00	4,207,500.00	-	-	-	5,707,500.00	40.62%
D. Alan Dillenberger, III	-	350,000.00	82,856.51	2,000.00	6,000.00	440,856.51	3.14%
C. Brian Case	-	100,000.00	82,856.51	2,000.00	6,000.00	190,856.51	1.36%
Charles P. Case	-	130,000.00	-	-	-	130,000.00	0.93%
Adolph Weil, IV	-	-	82,856.51	2,000.00	6,000.00	90,856.51	0.65%
Charles A. Collat, Jr.	-	-	82,856.51	2,000.00	6,000.00	90,856.51	0.65%
David L. Morgan	-	-	82,856.51	2,000.00	6,000.00	90,856.51	0.65%
Garrick L. Stosier	-	-	82,856.51	2,000.00	6,000.00	90,856.51	0.65%
Glenn C. Goedecke	-	-	82,856.51	2,000.00	6,000.00	90,856.51	0.65%
Lee A. Conn	-	-	82,856.51	2,000.00	6,000.00	90,856.51	0.65%
Pratt & Miller Engineering & Fabrication, Inc.	-	-	82,856.51	2,000.00	6,000.00	90,856.51	0.65%
Scott S. Margofies	-	-	82,856.51	2,000.00	6,000.00	90,856.51	0.65%
<b>Total</b>	\$ 1,500,000.00	\$ 10,950,000.00 <sup>6</sup>	\$ 1,521,084.10 <sup>6</sup>	\$ 20,000.00	\$ 60,000.00	\$ 14,051,084.10 <sup>6</sup>	100.00%

Notes

- <sup>1</sup> ServisFirst Line of Credit 2016-B dated of even date herewith.
- <sup>2</sup> Amended and Restated Credit Agreement dated as of March 6, 2015 between Grantor and ServisFirst Bank.
- <sup>3</sup> Amended and Restated Credit Agreement dated as of March 6, 2015 between Grantor and ServisFirst Bank.
- <sup>4</sup> Standby Letter of Credit number 20660 dated January 14, 2016, issued by ServisFirst in favor of Barber Companies, related to amortization of build out costs under Grantor's lease of the building at 500 28th Street South, Birmingham.
- <sup>5</sup> Standby Letter of Credit number 20661 issued by ServisFirst in favor of GE Commercial Distribution Finance Corporation, related to Grantor's obligations under dealer floor plan financing.
- <sup>6</sup> The line of credit and term loan under the ServisFirst agreement are \$10,750,000 and \$1,445,760, respectively. ServisFirst required Guarantors to guarantee 2.26% more than the combined proceeds from the line of credit and term loan.