

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
PGX HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-10718 (CTG)
Debtors.	)	(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY  
OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTORS TO (A) OBTAIN  
POSTPETITION FINANCING AND (B) UTILIZE CASH  
COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY  
ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING THE AUTOMATIC STAY,  
(IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion:<sup>2</sup>

**Preliminary Statement**

1. As discussed in the First Day Declaration, the Debtors filed these chapter 11 cases to effectuate a sale of substantially all of their assets and address their unsustainable liabilities in a manner that maximizes value for all stakeholders. The Debtors recently shut down approximately 80% of their business in response to an adverse ruling in the CFPB Litigation,

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: PGX Holdings, Inc. (2510); Credit Repair UK, Inc. (4798); Credit.com, Inc. (1580); Creditrepair.com Holdings, Inc. (7536); Creditrepair.com, Inc. (7680); eFolks Holdings, Inc. (5213); eFolks, LLC (5256); John C. Heath, Attorney At Law PC (8362); Progrexion ASG, Inc. (5153); Progrexion Holdings, Inc. (7123); Progrexion IP, Inc. (5179); Progrexion Marketing, Inc. (5073); and Progrexion Teleservices, Inc. (5110). The location of the debtors’ service address for purposes of these chapter 11 cases is: 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111.

<sup>2</sup> A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Chad Wallace, Chief Executive Officer of PGX Holdings, Inc., in Support of Chapter 11 Filing and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith on June 4, 2023 (the “Petition Date”) and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration or in the Interim Order (as defined below), as applicable.



which precipitated a severe liquidity crisis. To address these challenges, the Debtors commenced negotiations with their Prepetition Secured Lenders, and ultimately entered into a bridge financing, a restructuring support agreement (the “Restructuring Support Agreement”) for a plan of liquidation, and a commitment for the DIP Facility (as defined herein). The Debtors have also negotiated two substantially final stalking horse asset purchase agreements to facilitate the sale process.

2. The DIP Facility is necessary to fund these chapter 11 cases, including a value-maximizing sale process pursuant to section 363 of the Bankruptcy Code. The DIP Facility includes a \$19.925 million new-money commitment, including \$12 million of availability on an interim basis, and has a 105-day maturity. Shortly after the filing of these chapter 11 cases, the Debtors anticipate filing a motion pursuant to which they will seek the Court’s approval to sell substantially all of their assets to the stalking horse bidders or topping bidders pursuant to customary bidding procedures. The Restructuring Support Agreement commits the lenders party thereto to support a liquidating plan thereafter and the DIP Facility includes a wind-down budget in an amount of no less than \$2.625 million to support implementation of that plan, which will be automatically increased dollar for dollar to a maximum of \$3 million to the extent the Debtors have capital in excess of that listed in the then-current Approved Budget. The DIP Facility, the stalking horse asset purchase agreements, and the Restructuring Support Agreement are all conditioned on effectuating the sales within 105 days of the Petition Date, including a bid deadline with 60 days, an auction within 65 days, entry of the sale orders within 70 days, and closing of the sales within 105 days.

3. The DIP Facility also features a roll-up of prepetition debt into the DIP Obligations. The DIP Lenders requested, and the Debtors agreed to, the Roll-Up (as defined herein) in the

amount of (a) \$2.9 million, which corresponds to the amount of the emergency bridge financing provided during the week prior to the Petition Date, subject to entry of the Interim Order, and (b) \$39.85 million, subject to entry of the Final Order. The Roll-Up constitutes a key aspect of the DIP Facility, and the DIP Lenders would not agree to provide the DIP Facility absent the Roll-Up. The Roll-Up of the emergency bridge financing is also critical as the DIP Lenders would not have agreed to provide such bridge financing absent such Roll-Up subject to entry of the Interim Order. Additionally, as security for the DIP Obligations, the Debtors granted the DIP Agent a first lien on unencumbered property (including all of the previously unencumbered assets of the Lexington Law Firm) and a priming lien on Prepetition Collateral.

4. In parallel with discussions with their Prepetition Secured Lenders, the Debtors re-engaged Greenhill & Co., LLC (“Greenhill”) as their investment bankers to conduct a marketing process designed to identify other parties that may be interested in providing postpetition financing to the Debtors. Greenhill contacted approximately 30 third party financial institutions, of which seven executed an NDA. The Prepetition Secured Lenders would not consent to being primed by a third party, and no party other than the Prepetition Secured Lenders provided the Debtors with an out-of-court or debtor-in-possession financing facility.

5. Once it was determined that a debtor-in-possession financing facility would only be attainable from the Prepetition Secured Lenders, the Debtors and their advisors engaged in hard-fought negotiations on the terms of the DIP Facility in order to obtain the best possible terms. As part of these discussions, the Debtors and their advisors sought from the Prepetition Secured Lenders a greater amount of postpetition financing and a longer term for the DIP Facility, among other material terms. Following weeks of extensive arm’s length negotiations, the DIP Facility as

presented to the Court today represents the best possible debtor-in-possession financing facility that the Debtors could obtain.

6. The DIP Facility is critical to the Debtors' ability to fund their operations and the marketing process while providing sufficient liquidity at the outset of these chapter 11 cases. The DIP Facility is an essential component to providing a successful path forward while the Debtors expeditiously conduct their chapter 11 sale process. The proposed DIP Facility is therefore in the best interests of the Debtors, is necessary to avoid irreparable harm to the Debtors and their estates, and therefore should be approved.

### **Relief Requested**

7. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit B** (respectively, the "Interim Order" and the "Final Order," and together, the "DIP Orders"): <sup>3</sup>

- ***DIP Facility***: authorizing the Debtors to receive senior secured postpetition financing on a superpriority basis in the form of a senior secured, super priority multiple draw team loan facility in an aggregate principal amount of \$19.925 million (the "New Money DIP Loans"), consisting of, subject to the DIP Credit Agreement (as defined below), (i) upon entry of the Interim Order, one or more draws in an aggregate principal amount not exceeding \$12 million (the "Interim New Money DIP Loans"), (ii) upon entry of the Final Order, additional draws in an aggregate principal amount that will not, when combined with amounts advanced prior, exceed the remaining unfunded New Money DIP Loans, (iii) a roll-up (the "Interim Roll-Up"), subject to entry of the Interim Order, by the DIP Lenders of their ratable share of Prepetition First Lien Obligations in the amount of \$2.9 million equal to the Prepetition First Lien Obligations advanced to the Loan Parties pursuant to that certain Collateral Agent Advance Letter, dated as of May 31, 2023, by and among the Prepetition First Lien Agent, Prepetition First Lien Lenders, and Loan Parties (the "Interim Roll-Up Amount"), which amounts represent emergency financing that was necessary to allow the Debtors to operate prior to, and transition smoothly into, chapter 11 (the "Emergency Bridge"), and (iv) a roll up (the "Final Roll-Up," and together with the Interim Roll-Up, the "Roll-Up"), subject to entry of the Final Order, by the DIP Lenders of their ratable share of Prepetition First Lien

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<sup>3</sup> The Debtors will file the form of Final Order prior to the Final Hearing (as defined herein).

Obligations in the amount of \$39.85 million (the “Final Roll-Up Amount”, and together with the New Money DIP Loans, the “Final DIP Loans,” and together with the Interim Roll-Up Amount, the “Roll-Up Amount”, together with the New Money DIP Loans, the “Final DIP Loans”), pursuant to the terms and conditions of the Interim Order and that certain Superpriority Secured Debtor-In-Possession Financing Agreement (as amended, restated, or otherwise modified from time to time in accordance with the terms thereof, the “DIP Credit Agreement”) by and among the DIP Borrowers, the DIP Guarantors, the DIP Lenders, and Blue Torch Finance LLC, as administrative agent (in such capacity, the “DIP Agent”) (collectively, the “DIP Lenders”);

- **Cash Collateral:** authorizing the Debtors to use cash collateral (as defined in section 363(a) of the Bankruptcy Code, “Cash Collateral”) and all other Prepetition Collateral (as defined herein) and providing for adequate protection in favor of the Prepetition Secured Lenders as and to the extent provided in the DIP Orders and the DIP Documents;
- **DIP Documents:** authorizing the Debtors to enter into the DIP Credit Agreement, substantially in the form annexed as Schedule 1 to the Interim Order attached hereto, and all other DIP Documents and to perform all of the DIP Obligations);
- **Security and Priority:** authorizing the Debtors to grant, subject and subordinate solely to any Prepetition Permitted Liens and the Carve Out, senior liens and superpriority administrative expense status to the DIP Lenders to secure the DIP Obligations, including continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on the DIP Collateral;
- **Automatic Stay:** modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and conditions of the DIP Orders; and
- **Final Hearing:** scheduling a final hearing to consider entry of the Final Order.

8. In support of this motion, the Debtors filed the Augustine Declaration that is attached hereto as Exhibit A.

### **Jurisdiction and Venue**

9. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated

February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

10. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1(b), 4001-2, and 9013-1(m).

### **Background**

12. The Debtors are one of the nation’s leading credit repair service providers, helping customers repair their credit profiles and achieve their credit goals. Setting the industry standard for transparency, cutting edge technology-enabled solutions, and quality customer service, the Debtors help consumers access and understand the information contained in their credit reports, ensure that the information contained in those reports is fair, accurate, and complete, and address other factors that may negatively impact their credit scores. The Debtors are headquartered in Salt Lake City, Utah and have employees in nine other states. Debtor PGX Holdings, Inc. and Debtor John C. Heath, Attorney At Law PC d/b/a Lexington Law Firm (“Lexington Law”) generated approximately \$388 million in combined revenue in 2022. As of the Petition Date, the Debtors have approximately \$423 million in funded-debt obligations.

13. As set forth in greater detail in the First Day Declaration, certain Debtors are currently involved in litigation with the CFPB before the United States District Court for the District of Utah (the “District Court”). In such litigation, on five separate counts, the CFPB alleged that the defendant Debtors committed certain violations of federal consumer protection law through operation of their consumer assistance and credit repair business. On March 10, 2023, the District Court granted partial summary judgment against these Debtors on the first count of the CFPB Litigation, finding that billing customers in advance was in violation of 16 C.F.R. § 310.4(a)(2), the Telemarketing Sales Rule (the “TSR”). In connection with the first count, the CFPB is seeking money damages of nearly \$3 billion along with certain injunctive and other relief.

14. In response to the District Court’s ruling on the TSR count, and a subsequent denial of a stay of the ruling, the Debtors immediately stopped certain telemarketing activities, closed many of their call centers, and began evaluating the impact of the ruling on the future of their business, a process that remains ongoing. Following the Debtors’ reduction of business operations, the Debtors’ revenues also declined. Upon further review, the Debtors determined that their liquidity would continue to be severely constrained and their debt obligations are now unsustainable in light of their smaller operational footprint and decreased revenues going forward. The Debtors have commenced these chapter 11 cases to fully and fairly resolve their liabilities, with the aim of preserving value for stakeholders and maintaining the ability to deliver best-in-class crucial credit repair services to customers.

15. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural

consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

**Concise Statements Pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-2<sup>4</sup>**

16. The below chart contains a summary of the material terms of the proposed DIP Facility, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2.

Bankruptcy Code	Summary of Material Terms
<b>Borrower</b> 4001(c)(1)(B)	PGX Holdings, Inc., a Delaware corporation, Progrexion Holdings, Inc., a Delaware corporation, Credit.com, Inc., a Delaware corporation, eFolks Holdings, Inc., a Delaware corporation, and Creditrepair.com Holdings, Inc., a Delaware corporation (collectively, the “ <u>Borrowers</u> ”)  <i>See</i> DIP Credit Agreement, Introduction
<b>Guarantors</b> Bankruptcy Rule 4001(c)(1)(B)	PGX Holdings, Inc., a Delaware corporation (“ <u>Holdings</u> ”), in its capacity as a debtor and debtor-in-possession in the Chapter 11 Cases, and each of the Borrowers’ existing and future direct and indirect domestic subsidiaries that are affiliated debtors and debtors in possession in the Chapter 11 Cases, including the guarantors under the Prepetition Loan Documents, and John C. Heath, Attorney At Law PC (collectively, the “ <u>Guarantors</u> ”), in their capacities as debtors and debtors-in-possession in the Chapter 11 Cases, on a joint and several basis.  <i>See</i> DIP Credit Agreement, Introduction
<b>DIP Lenders</b> Bankruptcy Rule 4001(c)(1)(B)	Prepetition First Lien Lenders will, either directly or through one or more affiliates (or funds or accounts advised or sub-advised by such person) (such participating lenders, collectively, the “ <u>DIP Lenders</u> ”), finance the DIP Facility (as defined below) and participate in the New Money DIP Commitments (as defined below) on a pro rata basis, determined based on the outstanding principal amount of Term Loans under the Prepetition First Lien Financing Agreement (together with all other Obligations, the “ <u>Prepetition First Lien Obligations</u> ”) held by the DIP Lenders as of the date of the commencement of the Chapter 11 Cases (the “ <u>Petition Date</u> ”).  <i>See</i> DIP Credit Agreement, Introduction
<b>Term</b> Bankruptcy Rule	The date that all outstanding Obligations will be due and payable in full in cash unless otherwise agreed to by the Administrative Agent at the direction of the Required Lenders on the earliest of (i) the date that is one hundred and five (105) calendar days after the

<sup>4</sup> The summaries contained in this motion are qualified in their entirety by the provisions of the documents referenced, including the DIP Credit Agreement and the Interim Order. To the extent anything in this motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the DIP Documents or the DIP Orders, as applicable.

Bankruptcy Code	Summary of Material Terms
4001(b)(1)(B)(iii), 4001(c)(1)(B)  Local Rule 4001-2(a)(ii)	<p>Petition Date, (ii) if the Final DIP Order has not been entered, twenty-five (25) calendar days after the Petition Date, (iii) the acceleration of the Loans and the termination of the Commitments upon the occurrence, and during the continuance of an Event of Default (at the direction of the Required Lenders following and during the continuation of any Event of Default), (iv) the effective date of any Chapter 11 plan, (v) the date the Bankruptcy Court converts any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (vi) the date the Bankruptcy Court dismisses any of the Chapter 11 Cases, (vii) the date of consummation of any sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code; provided, for the avoidance of doubt, that in the case of the consummation of a sale pursuant to which the DIP Lenders have submitted a Credit Bid on account of some or all of the Obligations, the Obligations that are subject to such Credit Bid will not be due and payable in full in cash but shall be deemed satisfied in full by the consummation of such sale, and (viii) the date an order is entered in any bankruptcy case appointing a Chapter 11 trustee or examiner.</p> <p>See DIP Credit Agreement, "DIP Termination Date," Section 1.01</p>
<b>Commitment</b> Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(ii)	<p>Term loan facility available in multiple draws in an aggregate principal amount equal to \$19,925,000.</p> <p>See Interim Order at 2</p>
<b>Conditions of Borrowing</b>  Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(ii)	<p>(a) <u>Payment of Fees, Etc.</u> The Borrowers shall have paid in cash on or before the Effective Date all fees (including the Agent Fee) costs and expenses then due and payable pursuant to this Agreement, to the extent invoiced at least two (2) Business Days prior to the Effective Date.</p> <p>(b) <u>Representations and Warranties; No Event of Default.</u> The following statements shall be true and correct: (i) the representations and warranties contained in Article VI and in each other Loan Document delivered to any Secured Party pursuant hereto or thereto on or prior to the Effective Date are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality of "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality of "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.</p> <p>(c) <u>Legality.</u> The making of the New Money DIP Loans shall not contravene any law, rule or regulation applicable to any Secured Party.</p> <p>(d) <u>Delivery of Documents.</u> The Agents shall have received on or before the Effective Date the following, each in form and substance reasonably satisfactory to the Collateral Agent and Lenders, unless indicated otherwise, dated the Effective Date and, if applicable, duly executed by the Persons party thereto:</p>

Bankruptcy Code	Summary of Material Terms
	<p>(i) at least one (1) Business Day prior to the Effective Date, all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act; and the Administrative Agent shall have completed, with results satisfactory to the Administrative Agent, its review procedures regarding the respective documentation and information, on or prior to the Effective Date:</p> <p>(ii) [Reserved];</p> <p>(iii) the management rights letter, dated as of the date hereof, among the Loan Parties and the Agents, as amended, amended and restated, supplemented or otherwise modified from time to time (the “<u>VCO Management Rights Agreement</u>”);</p> <p>(iv) a certificate of an Authorized Officer of each Loan Party, certifying (A) as to copies of the Governing Documents of such Loan Party from its jurisdiction of organization, together with all amendments thereto (including, without limitation, a true and complete copy of the charter, certificate of formation, certificate of limited partnership (or equivalent) of each Loan Party certified as of a recent date by an appropriate official of the jurisdiction of organization of such Loan Party), (B) as to a copy of the resolutions or written consents of such Loan Party authorizing (1) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (2) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith and (C) the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers</p> <p>(v) [Reserved];</p> <p>(vi) [Reserved];</p> <p>(vii) a certificate of an Authorized Officer of the Administrative Representative and Lexington Law certifying as to the matters set forth in <u>Section 5.01(b)</u>; and</p> <p>(viii) duly executed copies of (1) this Agreement by each Debtor, each Lender and each Agent and (2) each of the other Loan Documents by each Lender party thereto, each Debtor party thereto, each Agent party thereto, and each of the other parties thereto.</p> <p>(e) [Reserved]</p> <p>(f) <u>Closing Fee</u>. The Initial DIP Closing Fee shall have been paid to the Administrative Agent, for the benefit of the Lenders, in full in cash (or taken as original issue discount, pursuant to the terms hereof), from the first proceeds of the Interim DIP Loan;</p> <p>(g) <u>Approvals</u>. Other than as a result of or in connection with the Chapter 11 Cases, all governmental and third party consents and approvals reasonably necessary to be obtained by the Debtors in connection with the DIP Facility, if any, shall have been obtained (without the imposition of any conditions that are not reasonably acceptable to the Administrative Agent) or permitted pursuant to the DIP Orders, as applicable, and shall remain in effect.</p>

Bankruptcy Code	Summary of Material Terms
	<p>(h) <u>Budget</u>. The Administrative Agent and Lenders shall have received the Initial Budget in form and substance reasonably satisfactory to the Administrative Agent at the direction of Required Lenders.</p> <p>(i) [Reserved].</p> <p>(j) <u>Security Interests</u>. Subject to the entry of the Interim DIP Order and the terms therein, the Administrative Agent, for the benefit of the Lenders, shall have a valid and perfected DIP Lien on and security interest in the DIP Collateral of the Debtors on the basis and with the priority set forth in the DIP Orders.</p> <p>(k) <u>Litigation</u>. Other than the Chapter 11 Cases, as stayed upon the commencement of the Chapter 11 Cases, or as otherwise disclosed in writing to the Administrative Agent prior to the Effective Date, there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in writing in any court or before any arbitrator or governmental authority that (i) would reasonably be expected to result in a Material Adverse Effect or (ii) restrains, prevents or purports to materially adversely affect the legality, validity or enforceability of the DIP Facility or the consummation of the transactions contemplated thereby.</p> <p>(l) <u>First Day Motions</u>. The Administrative Agent shall have received, all first day motions, including those related to the DIP Facility and any motion to sell any of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code (the "<u>Sale Motion</u>"), filed by the Debtors and related orders entered by the Bankruptcy Court in the Chapter 11 Cases, including, without limitation, with respect to the approval the DIP Facility, on an interim basis, and the bid procedures (the "<u>Bid Procedures</u>") accompanying the Sale Motion, shall each be in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders;</p> <p>(m) <u>Asset Purchase Agreement</u>. The Debtors (including Lexington Law) shall have entered into a stalking horse credit bid asset purchase agreement for the sale of all or substantially all of the assets of the Debtors (including Lexington Law) (the "<u>Asset Purchase Agreement</u>") to an acquisition entity formed by the Lenders, which Asset Purchase Agreement shall be in form and substance acceptable to the Administrative Agent and the Lenders in their sole discretion.</p> <p>(n) <u>Interim DIP Order</u>. The Bankruptcy Court shall have entered the Interim DIP Order within four (4) Business Days following the Petition Date, which Interim DIP Order shall include, without limitation, copies of the DIP Facility and the Initial Budget as exhibits thereto, entered on notice to such parties as may be satisfactory to the Administrative Agent at the direction of the Required Lenders, (i) authorizing and approving the DIP Facility and the transactions contemplated thereby, including, without limitation, the granting of the superpriority claim status, security interests and priming liens, and the payment of all fees, referred to herein and therein; (ii) authorizing the lifting or modification of the Automatic Stay to permit the Borrowers and the Guarantors to perform their obligations, and the Lenders to exercise their rights and remedies, with respect to the DIP Facility; (iii) authorizing the use of cash DIP Collateral and providing for adequate protection in favor of the Prepetition Agents and Prepetition Lenders, as and to the extent provided herein and therein; and (iv) reflecting such other terms and conditions that are mutually satisfactory to the Administrative Agent (at the direction of the Required Lenders) and the Debtors, in their respective discretion in each case, which Interim DIP Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent (at the direction of the Required Lenders); and</p>

Bankruptcy Code	Summary of Material Terms
	<p><u>Restraints</u>. Other than the DIP Orders, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the DIP Facility or the exercise by the Administrative Agent of its rights as a secured party with respect to the DIP Collateral.</p> <p>See DIP Credit Agreement, Section 5.01</p>
<p><b>Interest Rates</b> Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(ii)</p>	<p>“<u>Applicable Margin</u>” means, as of any date of determination, (a) with respect to the interest rate of the New Money DIP Loans (or any portion thereof) and the Interim Roll-Up Loans, 8.50% per annum and (b) with respect to the Roll-Up Loans (other than the Interim Roll-Up Loans), the “Applicable Margin” as defined in the Prepetition First Lien Financing Agreement.</p> <p>See DIP Credit Agreement, Section 1.01 “Applicable Margin”</p>
<p><b>Use of DIP Facility and Cash Collateral</b>  Bankruptcy Rule 4001(b)(1)(B)(ii)  Local Rule 4001-2(a)(ii)</p>	<p>The proceeds of the Loans shall be used only for the purposes set forth in <u>Section 6.01(s)</u>. Without in any way limiting the foregoing, and otherwise in accordance with the DIP Orders, no DIP Collateral, DIP Proceeds or any portion of the Carve-Out may be used directly or indirectly by any of the Debtors, the Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Cases (or any successor chapter 7 case) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith): (a) to seek authorization to obtain Liens or security interests that are senior to or <i>pari passu</i> with the DIP Liens or the Liens in existence on the Petition Date securing the Prepetition Obligations (the “<u>Prepetition Liens</u>”) (except to the extent expressly set forth herein); or (b) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any of the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing (all in their capacities as such), with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (ii) any so-called “lender liability” claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the DIP Credit Facility Super-Priority Claims, the DIP Liens, the Loan Documents, the Prepetition Liens, the Prepetition Loan Documents, or the Prepetition Obligations; (iv) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the Obligations or the Prepetition Obligations; (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) the Administrative Agent or the Lenders hereunder or under any of the Loan Documents, or (B) the Prepetition Agent or the Prepetition Lenders under any of the Prepetition Loan Documents (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the Administrative Agent’s or the Lenders’ assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the applicable Loan Documents and the DIP Orders); or (vi) objecting to, contesting, or interfering with, in any way, the Administrative Agent’s and the Lenders’ enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred; provided, however, that no more than \$50,000 in the aggregate of the DIP Collateral, DIP Proceeds, cash DIP Collateral or any portion of the Carve-Out or any other amounts may be used by the Committee, if any, to investigate claims and/or liens of the Prepetition Agents and Prepetition Lenders under the Prepetition Loan Documents.</p> <p>See DIP Credit Agreement, section 7.01(q)</p>

Bankruptcy Code	Summary of Material Terms
<b>“Roll-Up” Provisions</b> Local Rule 4001-2(a)(i)(E)	The DIP Facility will be used to pay down portions of the Prepetition First Lien Obligations. <i>See</i> Interim Order, Introduction (A)
<b>Adequate Protection</b> Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	<p>Subject to the Carve Out, the Prepetition Secured Lenders are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, to adequate protection of their interests in all Prepetition Collateral, including Cash Collateral, solely to the extent of and in an amount equal to the aggregate Diminution in Value, if any, of the Prepetition Secured Lenders’ interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, resulting from the Debtors’ use, sale, or lease of the Prepetition Collateral (including Cash Collateral), the priming of the Prepetition Secured Lenders’ security interests and liens on the Prepetition Collateral (including Cash Collateral) by the DIP Lenders pursuant to the DIP Documents and this Interim Order, the Carve Out, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the “<u>Adequate Protection Claim</u>”). On account of such Adequate Protection Claim, the Prepetition Secured Lenders, as applicable, shall receive the following (collectively, the “<u>Adequate Protection Obligations</u>”):</p> <p>(a) Adequate Protection Liens. The Prepetition Secured Lenders are hereby granted (effective and perfected and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Adequate Protection Claim, a valid, binding, enforceable, non-avoidable and automatically and properly perfected replacement security interest in and lien upon all of the DIP Collateral, including replacement security interest in and lien upon all Unencumbered Property upon the date of this Interim Order and, upon entry of a Final Order, including the Avoidance Actions/Proceeds, in each case subject and subordinate only to (i) the DIP Liens and any liens to which the DIP Liens are junior, including the Prepetition Permitted Liens, if any, (ii) the Carve Out, and (iii) the Prepetition Intercreditor Agreement (the “<u>Adequate Protection Liens</u>”). Except as provided herein, the Adequate Protection Liens shall not be made subject to, or <i>pari passu</i> with, any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be <i>pari passu</i> with or senior to the Adequate Protection Liens.</p> <p>(b) Adequate Protection Section 507(b) Claim. The Prepetition Secured Lenders are hereby granted, subject to the DIP Superpriority Claims and the Carve Out, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claim with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (other than the DIP Superpriority Claims) (the “<u>Adequate Protection 507(b) Claim</u>”), which Adequate Protection 507(b) Claim shall have recourse to and be payable from all of the DIP Collateral in accordance with the priorities set forth herein, including, upon entry of a Final Order, the Avoidance Actions/Proceeds. Except to the extent expressly set forth in this Interim Order or the DIP Documents, the Prepetition Secured Lenders shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior</p>

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	<p>to or pari passu with the DIP Superpriority Claims, including claims that benefit from the Carve Out, have been indefeasibly paid in full and all DIP Commitments have been terminated.</p> <p>(c) Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of paragraph 16 of this Interim Order, and subject to the Carve Out and the Prepetition Intercreditor Agreement, (i) all reasonable and documented out-of-pocket fees and expenses of the Prepetition Agents and the Prepetition Secured Lenders (the “<u>Adequate Protection Fees</u>”), whether incurred before or after the Petition Date, limited, in the case of counsel, to all reasonable and documented out-of-pocket fees and expenses of (a) (i) King &amp; Spalding, LLP, as counsel to the DIP Agent, the Prepetition First Lien Agent, and the Prepetition First Lien Lenders and (ii) Morris, Nichols, Arsht &amp; Tunnell LLP, as local counsel to the DIP Agent, the Prepetition First Lien Agent, and the Prepetition First Lien Lenders, and (b) (i) Proskauer Rose LLP, as counsel to the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders and (ii) Morris, Nichols, Arsht &amp; Tunnell LLP, as local counsel to the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders (such counsel listed (a)-(b), collectively, the “<u>Secured Parties Counsel</u>”); provided, that, immediately upon entry of this Interim Order, the Debtors are authorized and directed to pay all such Adequate Protection Fees incurred prior to and through the Petition Date that remain outstanding upon entry of this Interim Order to the Prepetition Agents and/or the Prepetition Secured Lenders, as applicable (the “<u>Adequate Protection Payments</u>”). None of the Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court’s approval of any such payments.</p> <p>(d) Adequate Protection Reservation. Subject to the Prepetition Intercreditor Agreement, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Lenders is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. The receipt by the Prepetition Secured Lenders of the adequate protection provided for herein shall not be deemed an admission that the interests of the Prepetition Secured Lenders are adequately protected. Further, this Interim Order shall not prejudice or limit the rights of the Prepetition Secured Lenders to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection in a manner consistent with the Prepetition Secured Loan Documents.</p> <p>See Interim Order ¶ 9(a) - (d)</p>
<p><b>Repayment Features</b> Local Rule 4001-2(a)(i)(E)</p>	<p>The Borrowers may, at any time and from time to time, by 3:00 p.m. (New York City time) at least five (5) Business Days' (or such shorter time as may be agreed by the Administrative Agent in its reasonable discretion) prior written notice to the Administrative Agent, prepay the principal of the Loans, in whole or in part. Each prepayment made pursuant to this Section 2.05(b)(ii) shall be accompanied by the payment of accrued interest to the date of such payment on the amount prepaid. Each such prepayment shall be applied against the remaining installments of principal due on the Loans in the inverse order of maturity; provided that prepayments of the Loans shall be applied (i) first, to prepay the New Money DIP Loans and (ii) second, to prepay the Roll-Up Loans.</p> <p>See DIP Credit Agreement, Section 2.05</p>

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<p><b>Fees</b> Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p><u>Closing Fee.</u> The Borrowers shall pay, in cash, to the Administrative Agent for the account of the Lenders, in accordance with their Pro Rata Shares of such Commitments, a non-refundable closing fee equal to 3.50% of (x) (i) the Interim DIP Loan Commitments and (ii) Interim Roll-Up Loans, which each shall be deemed fully earned, due and payable upon the entry of the Interim Order (the “<u>Initial DIP Closing Fee</u>”) and (y) the Final DIP Loan Commitments, which shall be deemed fully earned, due and payable upon the entry of the Final Order (the “<u>Final DIP Closing Fee</u>” and together with the Initial DIP Closing Fee, the “<u>Closing Fee</u>”).</p> <p><u>Agent Fee.</u> On or prior to the Effective Date, the Borrowers shall pay to the Administrative Agent a nonrefundable agent fee (the “<u>Agent Fee</u>”) of \$75,000, which shall be deemed fully earned upon the entry of the Interim Order.</p> <p>See DIP Credit Agreement, Section 2.06</p>
<p><b>Budget,</b> Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p> <p><b>Variance Covenant</b> Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</p>	<p>Following delivery of the Budget on the Petition Date, by not later than 5:00 p.m. Mountain Time on (x) each second Thursday thereafter, a Cash Flow Update and (y) the earlier of (i) each fourth Thursday thereafter, a Budget Update and (ii) within three (3) Business Days’ of receipt of any Retained Proceeds, a Budget Update, in each case, in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders (provided, such new Budget shall be deemed to be in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders if the Budget has been received by applicable representatives designated by Administrative Agent, and the Administrative Agent does not provide any comments for a period of three (3) Business Days after receipt thereof by the Administrative Agent and, for the avoidance of doubt, such Budget shall become the approved Budget for all purposes under this Agreement) for the subsequent 13 week period consistent with the form of the Budget, and such Budget Update shall become the “Budget” for the purposes of the DIP Facility upon the Administrative Agent’s acknowledgement at the direction of the Required Lenders that the proposed Budget Update is substantially in the form of the Budget and in substance satisfactory to the Administrative Agent at the direction of the Required Lenders (provided, that, subject to the deemed approval set forth in this Section 7.01(a)(v), until a new Budget has been approved by the Administrative Agent at the direction of the Required Lenders, the most recently approved Budget shall govern); (2) beginning on the Thursday following a full calendar week after the Petition Date (by not later than 5:00 p.m. Mountain Time), and on every Thursday thereafter (by not later than 5:00 p.m. Mountain Time), (x) a variance report (the “Variance Report”) setting forth actual cash receipts and disbursements and cash flows of the Debtors for the prior Testing Period and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such period as compared to the applicable approved Budget delivered by the Debtors, in each case, on a weekly basis (and each such Variance Report shall include explanations for all material variances and shall be certified by the chief financial officer of the Debtors), and (y) an updated “key performance indicators” slide deck prepared by the Borrower in form and substance consistent with the deck delivered to the Administrative Agent on May 31, 2023 and to the Lenders prior to the Effective Date); and (3) the Permitted Variances with respect to each Testing Period shall be determined and reported to the Administrative Agent and the Lenders, not later than 5:00 p.m. Mountain Time on each Thursday immediately following the end of each such Testing Period. Additional variances, if any, from the Budget, and any proposed changes to the Budget, shall be subject to the approval of the Administrative Agent (acting at the direction of the Required Lenders). The Debtors will promptly provide notice to the Administrative Agent, for distribution to the Lenders, of any Material Adverse Effect.</p> <p>See DIP Credit Agreement, Section 7.01(a)(v)</p>

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<p><b>Events of Default</b>                      Bankruptcy Rule                      4001(c)(1)(B)                      Local Rule                      4001-2(a)(ii)</p>	<p>Each of the following events shall constitute an event of default (each, an “<u>Event of Default</u>”):</p> <p>(a) any Borrower shall fail to pay, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (i) any interest on any Loan or any fee, indemnity or other amount payable under this Agreement (other than any portion thereof constituting principal of the Loans) or any other Loan Document, and such failure continues for a period of 2 Business Days or (ii) all or any portion of the principal of the Loans;</p> <p>(b) any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any certificate or other writing delivered to any Secured Party pursuant to any Loan Document shall have been incorrect in any material respect (or in any respect if such representation or warranty is qualified or modified as to materiality or “Material Adverse Effect” in the text thereof) when made or deemed made;</p> <p>(c) any Loan Party shall fail to perform or comply with any covenant or agreement contained in:</p> <p>(i) Section 4.07(c), Section 7.01(a), Section 7.01(d), Section 7.01(f), Section 7.01(k), Section 7.01(t), Section 7.01(u), Section 7.01(v) or Section 7.02, or Article VIII;</p> <p>(ii) Section 7.01(c) or Section 7.01(h), and such failure, if capable of being remedied, shall remain unremedied for 2 Business Days after the earlier of the date a senior officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by an Agent to such Loan Party;</p> <p>(iii) [Reserved];</p> <p>(d) any Loan Party shall fail to perform or comply with any other term, covenant or agreement contained in any Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 9.01, such failure, if capable of being remedied, shall remain unremedied for 20 days after the earlier of the date a senior officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party;</p> <p>(e) any Loan Party shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any principal, interest or other amount payable in respect of any Material Indebtedness (excluding Indebtedness evidenced by this Agreement), and excluding, for the avoidance of doubt, Indebtedness under the Prepetition First Lien Loan Documents and Prepetition Second Lien Loan Documents), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or any other default under any agreement or instrument relating to any such Indebtedness, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, and the maturity of such Indebtedness is accelerated as a result thereof; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case, prior to the stated maturity thereof;</p> <p>(f) other than with respect to the Chapter 11 Cases, any Debtors (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall be generally not paying its debts as such debts become</p>

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	<p>due or shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any action to authorize or effect any of the actions set forth above in this subsection (f);</p> <p>(g) other than with respect to the Chapter 11 Cases, any proceeding shall be instituted against any Debtors seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of 30 days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur;</p> <p>(h) any material provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any Loan Party that is a party thereto, or a proceeding shall be commenced by any Loan Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any Loan Document;</p> <p>(i) subject in all respects to the Carve-Out, any security document or security provision in any Loan Document, after delivery thereof pursuant hereto, shall for any reason (other than the failure of the Agents or any Lender to make required filings or take required actions based on accurate information timely provided by the Loan Parties) fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any material portion of the DIP Collateral purported to be covered thereby;</p> <p>(j) other than with respect to the CFPB Action, one or more judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of money exceeding \$1,000,000 in the aggregate shall be rendered against any Debtors and remain unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of 20 consecutive days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal; provided, however, that any such judgment, order, award or settlement shall not give rise to an Event of Default under this subsection if and for so long as (1) the amount of such judgment, order, award or settlement in excess of \$1,000,000 is covered by a valid and binding policy of insurance between the applicable Person and the insurer covering full payment thereof (other than any deductible), and (2) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment, order, award or settlement;</p> <p>(k) any Loan Party or any Subsidiary is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting, or otherwise ceases to conduct for any reason whatsoever, all or any material part of the businesses of the Loan Parties (taken as a whole) for more than 20 consecutive days if such injunction, restraint or other prevention could reasonably be expected to result in a Material Adverse Effect;</p> <p>(l) any material damage to, or loss, theft or destruction of, any material portion of the DIP Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than 30</p>

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	<p>consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Loan Party, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect;</p> <p>(m) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party or any Subsidiary, if such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect;</p> <p>(n) the indictment of any Loan Party under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party, pursuant to which statute or proceedings the penalties or remedies sought include forfeiture to any Governmental Authority of any material portion of the DIP Collateral of such Loan Party;</p> <p>(o) (x)(i) there shall occur one or more ERISA Events that individually or in the aggregate results in, or could reasonably be expected to result in, liability of any Loan Party or any of its Subsidiaries or ERISA Affiliates in excess of \$1,000,000, or (ii) there exists any fact or circumstance that could reasonably be expected to result in the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 4068 of ERISA upon the property or rights to property of any Loan Party or any of its Subsidiaries or ERISA Affiliates or (y) any event similar to the foregoing occurs or exists with respect to a Foreign Plan;</p> <p>(p) (i) there shall occur and be continuing any “Event of Default” (or any comparable term) under, and as defined in, any Material Indebtedness (other than the Prepetition First Lien Financing Agreement and the Prepetition Second Lien Financing Agreement) or (ii) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness;</p> <p>(q) [Reserved];</p> <p>(r) a Change of Control shall have occurred;</p> <p>(s) either of the Company or the Initial Transferor (in each case, as defined in the Transfer Agreement as of December 28, 2022) shall breach the Transfer Agreement in any material respect;</p> <p>(t) other than a Known Event, there occurs an event that would have a Material Adverse Effect;</p> <p>(u) the occurrence and continuance of any of the following in any Chapter 11 Case:</p> <p>(A) termination of the Asset Purchase Agreement solely due to a breach thereunder by any Debtor;</p> <p>(B) filing of a motion seeking approval of a sale pursuant to Section 363 of the Bankruptcy Code (other than as contemplated by the Asset Purchase Agreement) or a plan of reorganization or liquidation in any of the Chapter 11 Cases that, in either case, does not provide for indefeasible payment in full in cash to the Administrative Agent and Lenders of all Loans and all other Obligations and any other amounts outstanding pursuant to this Agreement and the DIP Orders on closing of such sale of the effective date of such plan;</p> <p>(C) any of the Debtors shall file a pleading seeking to amend, vacate or modify any of the Loan Documents or DIP Orders over the objection of the Administrative Agent or the Administrative Agent at the direction of the Required Lenders;</p> <p>(D) entry of an order without the prior written consent of the Administrative Agent (at the direction of Required Lenders) amending, supplementing or otherwise</p>

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	<p>modifying DIP Orders;</p> <p>(E) reversal, vacatur or stay of the effectiveness of the DIP Orders, which continues for five (5) Business Days;</p> <p>(F) any violation of any material term of the DIP Orders by the Debtors;</p> <p>(G) dismissal of any of the Chapter 11 Cases or conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking such dismissal or conversion of any bankruptcy case;</p> <p>(H) the entry of an order by the Bankruptcy Court appointing, or the filing of a motion or application by any Debtor an order seeking the appointment of, in either case, without the prior consent of the Required Lenders, a Chapter 11 trustee or examiner with enlarged powers or any Debtor shall file a motion or other pleading seeking such appointment;</p> <p>(I) any sale of all or substantially all assets of the Debtors pursuant to Section 363 of the Bankruptcy Code, unless such sale is conducted in accordance with the Bid Procedures and Bid Procedures Order and consented to by the Required Lenders;</p> <p>(J) [Reserved];</p> <p>(K) granting of relief from the Automatic Stay by the Bankruptcy Court after notice and hearing in the Chapter 11 Cases to permit enforcement upon any Lien or foreclosure or enforcement on assets of the Borrowers or any Guarantor;</p> <p>(L) the bringing of a motion or application by any Debtor in any of the Chapter 11 Cases, or the entry of any order by the Bankruptcy Court in any of the Chapter 11 Cases: (A) to obtain additional post-petition financing under section 364(c) or (d) of the Bankruptcy Code that does not provide for the indefeasible repayment of all Obligations under this Agreement and Prepetition Obligations under the Prepetition Financing Agreement in full in cash immediately upon the consummation of such financing without the prior written consent of the Required Lenders or (B) except as provided in this Agreement, the DIP Orders or otherwise consistent with the Budget (subject to Permitted Variances), to use cash collateral of the Agents and the Lenders under section 363(c) of the Bankruptcy Code or any equivalent provision of the relevant applicable law without the prior written consent of the Administrative Agent and the Required Lenders;</p> <p>(M) an order shall be entered in any of the Chapter 11 Cases, without the prior written consent of the Administrative Agent at the direction of Required Lenders (i) to permit any administrative expense or any claim (now existing or hereafter arising of any kind or nature whatsoever) to have administrative priority equal or superior to the DIP Credit Facility Super-Priority Claims or (ii) granting or permitted grant of a lien that is equal in priority or senior to the DIP Liens (in each case other than the Carve-Out);</p> <p>(N) the Debtors' filing of (or supporting another party in the filing of) a motion seeking entry of an order approving any key employee incentive plan, employee retention plan, or comparable plan, without the prior written consent of the Required Lenders;</p> <p>(O) (1) the Debtors or any other person shall seek, or shall support any other person's motion seeking (in any such case, verbally in any court of competent jurisdiction or by way of any motion or pleading with the Bankruptcy Court, or any</p>

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	<p>other writing to another party in interest by Debtors) to challenge the validity or enforceability of any of the DIP Lien, Obligations, Lien (as defined therein) or Prepetition Obligations of the parties under the Prepetition Loan Documents, including, but not limited to, seeking to prohibit, limit or restrict the right of the Prepetition First Lien Agent (on behalf of the Prepetition First Lien Lenders) to credit bid for any or all of the Debtors' assets, or (2) the Bankruptcy Court enters an order prohibiting, restricting, precluding, or otherwise impairing the unqualified right of the Agents or the Prepetition Agent (or their respective designees) from having the right to or being permitted to "credit bid" any amount of the Obligations or Prepetition Obligations, respectively, with respect to the assets of the Debtors;</p> <p>(P) the Debtors shall assert in any pleading filed in any court that the guarantee contained in the Loan Documents is not valid and binding, for any reason, to be in full force and effect, other than pursuant to the terms hereof;</p> <p>(Q) payment of (or application by any Debtor for authority to pay) or granting adequate protection with respect to prepetition Indebtedness, other than as provided herein or in the DIP Orders or relief sought in any "first motions" filed on the Petition Date as otherwise permitted herein (including in accordance with the Budget (subject to Permitted Variances));</p> <p>(R) expiration or termination of the period provided by section 1121 of the Bankruptcy Code for the exclusive right to file a plan, with respect to a Debtor unless such expiration or termination was sought by the Administrative Agent at the direction of the Required Lenders;</p> <p>(S) the Bankruptcy Court's determination of the cessation of the DIP Liens or the DIP Credit Facility Super-Priority Claims to be valid, perfected and enforceable in all respects;</p> <p>(T) Permitted Variances under the Budget are exceeded for any period of time without consent of or waiver by the Administrative Agent at the direction of the Required Lenders;</p> <p>(U) any uninsured judgments are entered with respect to any post-petition non-ordinary course claims against any of the Debtors or any of their respective affiliates in a combined aggregate amount in excess of \$25,000 unless stayed;</p> <p>(V) any Debtor asserting any right of subrogation or contribution against any other Debtor until all borrowings under the DIP Facility are paid in full in cash and the commitments are terminated;</p> <p>(W) subject to entry of the Final DIP Order, the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against any Lender;</p> <p>(X) the commencement of a suit or action against any Lender and, as to any suit or action brought by any person other than any Debtor or an officer or employee of any Debtor, the continuation thereof without dismissal for thirty (30) days after service thereof on the Lenders, that asserts or seeks by or on behalf of the Debtors, any Committee or any other party in interest in any of the Chapter 11 Cases, a claim or any legal or equitable remedy that would (i) have the effect of subordinating any or all of the Obligations or DIP Liens of the Lenders under the Loan Documents to any other claim, or (ii) have a material adverse effect on the rights and remedies of the Administrative Agent and/or the Lenders under any Loan Document or the collectability of all or any portion of the Obligations;</p>

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	<p>(Y) the entry of an order in any bankruptcy case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;</p> <p>(Z) an order shall have been entered by the Bankruptcy Court prohibiting, limiting or restricting the right of the Administrative Agent (on behalf of the Lenders) or the Prepetition First Lien Agent (on behalf of the Prepetition First Lien Lenders) to credit bid for any or all of the Debtors' assets;</p> <p>(AA) the payment of, or application by any Debtor for authority to pay, any prepetition claim, via a "first-day" order or otherwise, other than (i) as consented to by the Required Lenders, (ii) as authorized by the Budget (including Permitted Variances), (iii) permitted under the terms of this Agreement or (iv) as authorized by the Bankruptcy Court or the DIP Orders and otherwise permitted in the Budget;</p> <p>(BB) any event, development, state of facts, change, circumstance, occurrence, condition or effect occurring after the Petition Date that relates to or arises from the CFPB Action and that, either individually or in the aggregate: has had or could reasonably be expected to have an adverse effect on any of (i) the operations, assets, liabilities or financial condition of the Loan Parties taken as a whole, (ii) the ability of the Loan Parties to perform any of their payment obligations, or any other obligation, under any Loan Document or the DIP Orders, (iii) the legality, validity or enforceability of the DIP Facility, (iv) the rights and remedies of any Agent or any Lender under the Loan Documents or DIP Orders and (v) the validity, perfection or priority of a Lien in favor of the Collateral Agent for the benefit of the Lenders; and</p> <p>(CC) any settlement of the CFPB Action that is not consented to by the Administrative Agent at the direction of the Required Lenders.</p> <p><i>See DIP Credit Agreement, Section 9.01</i></p>
<p><b>Indemnification</b> Bankruptcy Rule 4001(c)(1)(B)(ix)</p>	<p>(a) In addition to each Loan Party's other Obligations under this Agreement, the Loan Documents and the DIP Orders, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Secured Party and all of their respective Related Parties (collectively called the "<u>Indemnitees</u>") from and against any and all claims, losses, damages, liabilities, obligations, penalties, fees, reasonable and documented out-of-pocket costs and expenses (including, without limitation, reasonable and documented out-of-pocket attorneys' fees and expenses limited to the reasonable and documented out-of-pocket fees and expenses of King &amp; Spalding LLP, Proskauer Rose LLP, and, if necessary, one (1) local counsel in each relevant jurisdiction material to the interests of the Indemnitees (taken as a whole) (which may include a single special counsel acting in multiple jurisdictions) (and any successor counsel to each), any regulatory or other special counsel to the Agents reasonably deemed necessary by the Agents and, in the event of any actual conflict of interest, one (1) conflicts counsel in each relevant jurisdiction to each group of affected Lenders that are similarly situated (taken as a whole)) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document, the DIP Orders, the Chapter 11 Cases, any Environmental Claim or any other document executed in connection with the transactions contemplated by this Agreement or the DIP Orders, (ii) any Agent's or any Lender's furnishing of funds to the Borrowers under this Agreement, the other Loan Documents or the DIP Orders, including, without limitation, the management of any such Loans or the Borrowers' use of the proceeds thereof, (iii) the Agents and the Lenders relying on any instructions of the Administrative Representative or the handling of the Loan Account</p>

Bankruptcy Code	Summary of Material Terms
	<p>and DIP Collateral of the Borrowers as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement, the other Loan Documents, the DIP Orders or by any document executed in connection with the transactions contemplated by this Agreement, the other Loan Documents or the DIP Orders, or (v) any claim, including any litigation, investigation or proceeding relating to or arising out of any of the foregoing, whether or not any Indemnitee is a party thereto and whether or not the transactions contemplated under this Agreement, the Loan Documents or the DIP Orders are consummated (collectively, the “<u>Indemnified Matters</u>”); provided, however, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection for any Indemnified Matters arising solely from (1) the gross negligence, bad faith or willful misconduct of such Indemnitee or their respective directors, officers, employees, partners or other representatives, as determined by a final non-appealable judgment of a court of competent jurisdiction or (2) any dispute solely among Indemnitees other than claims arising out of actions or omissions of any Loan Party or any of their respective Affiliates.</p> <p>(b) The indemnification for all of the foregoing losses, damages, fees, costs and expenses of the Indemnitees set forth in this Section 12.15 are chargeable against the Loan Account. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees. This Section 12.15 shall not apply to Taxes other than any Taxes that represent losses, claims or damages arising from a non-Tax claim.</p> <p>(c) No party hereto shall, to the extent permitted by applicable law, assert, and each party hereto hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. Notwithstanding the foregoing, this paragraph shall not waive the liability of any Loan Party for special, indirect, consequential or punitive damages arising out or, in connection with, as a result of, or in any way related to any third party claims against any Secured Party.</p> <p>(d) The indemnities and waivers set forth in this Section shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.</p> <p>See DIP Credit Agreement, Section 12.15.</p>
<p><b>Milestones</b> Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(ii)</p>	<p>As a condition to the use of the DIP Facility and Cash Collateral, and as further adequate protection to the Prepetition Secured Lenders, the DIP Lenders and Prepetition Secured Lenders are hereby entitled to performance of the following milestones by the dates set forth below (or such later date as may be agreed by the DIP Agent (acting at the direction of the Required DIP Lenders)) (the “<u>Milestones</u>”), and for the avoidance of doubt, unless waived by the DIP Agent (acting at the direction of the Required DIP Lenders) in accordance with the terms of the DIP Documents, the failure of the Debtors to comply with any of the Milestones shall constitute an Event of Default under the DIP Credit Agreement and this Interim Order</p>

Bankruptcy Code	Summary of Material Terms
	<p>and permit the DIP Agent (at the direction of the Required DIP Lenders) to exercise their respective rights and remedies as and to the extent provided for in this Interim Order and the DIP Documents:</p> <p>No later than two (2) Business Days after the Petition Date, the Debtors shall file an appropriate motion with the Bankruptcy Court for the sale of any of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code (the "<u>Sale Motion</u>"), and the bid procedures (the "<u>Bid Procedures</u>") that establishes a date that is no later than sixty (60) calendar days after the Petition Date as the deadline for the submission of binding bids with respect to their assets;</p> <p>No later than four (4) Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order;</p> <p>No later than twenty-five (25) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final Order, subject to the availability of the Bankruptcy Court to conduct the final hearing on the DIP Facility;</p> <p>No later than thirty (30) calendar days after the Petition Date, obtain entry by the Bankruptcy Court of an order approving the Bid Procedure (the "<u>Bid Procedures Order</u>"), which order shall be in form and substance acceptable to the DIP Agent at the direction of the Required DIP Lenders;</p> <p>No later than sixty-five (65) calendar days after the Petition Date, the Debtors shall commence an auction for the Acquired Assets, in accordance with the Bid Procedures Order; provided that if there is no higher or better offer submitted in comparison to the stalking horse bid(s), no auction shall be held;</p> <p>No later than seventy (70) calendar days after the Petition Date, the Bankruptcy Court shall have entered one or more sale order(s) (which shall be in form and substance acceptable to Required DIP Lenders) approving each of the winning bid(s) resulting from such sale(s); and</p> <p>Consummation of the sale and transactions contemplated thereby shall occur no later than the date that is one hundred and five (105) calendar days after the Petition Date.</p> <p>See Interim Order ¶ 11.</p>
<p><b>Entities with Interests in Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(i)</p>	<p>The following secured parties have an interest in Cash Collateral:</p> <p>Prepetition Secured Parties</p> <p>See Interim Order ¶ E(iv)</p>
<p><b>Carve Out</b> Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)(f)</p>	<p>"Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "<u>Allowed Professional Fees</u>") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "<u>Debtor Professionals</u>") and the Creditors' Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "<u>Committee Professionals</u>" and, together with the Debtor Professionals, the "<u>Professional Persons</u>") at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger</p>

Bankruptcy Code	Summary of Material Terms
	<p>Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$1,000,000 incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent, acting at the direction of the Required Lenders under and as defined in the DIP Documents (or, after the DIP Obligations have been indefeasibly paid in full, the Prepetition Agent acting at the direction of the Required Lenders (as such term is defined in the Prepetition First Lien Documents) under the Prepetition First Lien Documents, to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the New Money DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked</p> <p>See Interim Order ¶ 18</p>
<p><b>Liens and Priorities</b>  Bankruptcy Rule  4001(c)(1)(B)(i)   Local Rule  4001-2(a)(i)(D) and  (G), 4001-2(a)(ii)</p>	<p>As security for the DIP Obligations, effective and perfected immediately upon entry of this Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good, or the possession or control by the DIP Agent or DIP Lenders of, or over, any DIP Collateral, the following continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition first priority security interests and liens are hereby granted to the DIP Agent, for the benefit of the DIP Lenders (all presently owned and hereafter acquired property identified in clauses (a), (b) and (c) below being collectively referred to as the “DIP Collateral”, and all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents identified in clauses (a), (b) and (c), the “<u>DIP Liens</u>”):</p> <p>(a) First Lien on Unencumbered Property. Subject only to the Carve Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to a valid, perfected and non-avoidable lien (collectively, “<u>Unencumbered Property</u>”), including any and all unencumbered cash of the Debtors and any investment of such cash, cash equivalents, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits, in each case, with respect to any and all of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, including, subject to entry of a Final Order, the Avoidance Actions/Proceeds;</p> <p>(b) Priming Liens on Prepetition Collateral. Subject only to the Carve Out and any Prepetition Permitted Liens, pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in, and lien upon, all pre- and postpetition property of the Debtors (including any and all cash, cash equivalents and Cash Collateral and any investment of such cash, cash equivalents and Cash Collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including post-petition intercompany claims against any Debtor), contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts,</p>

Bankruptcy Code	Summary of Material Terms
	<p>patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits of any and all of the foregoing), whether now existing or hereafter acquired, that is subject to the Prepetition Secured Liens, which lien shall be senior in all respects to such Prepetition Secured Liens. Such security interests and liens shall be senior in all respects to and prime the interests in such property of the Prepetition Secured Lenders arising from current and future liens of the Prepetition Secured Lenders (including the Adequate Protection Liens granted hereunder);</p> <p>(c) DIP Liens Junior to Certain Other Liens. Subject only to the Carve Out, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors that is subject to Prepetition Permitted Liens on the Petition Date or subject to a Prepetition Permitted Lien in existence on the Petition Date that is perfected subsequent thereto solely as permitted by section 546(b) of the Bankruptcy Code; and</p> <p>(d) DIP Liens Senior to Certain Other Liens. Except for the Carve Out and as otherwise provided in this paragraph 5, the DIP Liens shall not be (i) subject or subordinate to (a) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (b) unless otherwise provided for in the DIP Documents or in this Interim Order, any liens or security interests arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, (c) any intercompany or affiliate liens of the Debtors, or (d) any orders of attachment or judicial liens; or (ii) subordinated to or made pari passu with any other lien or security interest under section 363 or 364 of the Bankruptcy Code heretofore or hereinafter granted in these Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code</p> <p><i>See Interim Order, ¶ 5(a) - (d)</i></p>
<p><b>506(c) Waiver; Section 552(b)</b>  Bankruptcy Rule 4001(c)(1)(B)(x); 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(i)(C); 4001-2(a)(i)(h)</p>	<p>Subject in all respects to the Carve-Out, upon entry of the Final DIP Order, the Debtors (on behalf of themselves and their estates) shall irrevocably waive, and shall be prohibited from asserting in the Chapter 11 Cases or any successor cases, (i) any surcharge claim under sections 105(a) or 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders upon the DIP Collateral or the Prepetition DIP Collateral, and (ii) the Agents, the Lenders, the Prepetition Agents and the Prepetition Lenders, shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Agents, the Lenders, the Prepetition Agents and the Prepetition Lenders with respect to proceeds, product, offspring or profits of any of the Prepetition DIP Collateral or DIP Collateral.</p> <p><i>See DIP Credit Agreement, Section 4.09</i></p>
<p><b>Stipulations to Prepetition Liens and Claims</b>  Bankruptcy Rule 4001(c)(1)(B)(iii)</p>	<p>Prior to the Petition Date and pursuant to the Prepetition Financing Agreements, the Prepetition Secured Obligors were indebted and liable to the Prepetition Secured Lenders (a) with respect to the outstanding obligations under the Prepetition First Lien Financing Agreement, for term loans in the aggregate principal amount of \$243,447,030.58, which amounts are inclusive of the Emergency Bridge, and (b) with respect to the outstanding obligations under the Prepetition Second Lien Financing Agreement, for term loans in the aggregate principal amount of \$179,986,411.00, plus, with respect to subsections (a)-(b) of</p>

Bankruptcy Code	Summary of Material Terms
<p>Local Rule 4001-2(a)(i)(B)</p>	<p>this sentence, all accrued but unpaid interest (including interest paid in kind, accrued but unpaid interest payable in cash and interest at the default rate, each as applicable), fees, expenses, and disbursements (including attorneys’ fees, accountants’ fees, auditor fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, guarantee obligations, and all other Prepetition Secured Loan Obligations expressly provided for under the Prepetition Financing Agreements, or incurred in connection therewith, and the Debtors are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Prepetition Secured Loan Obligations.</p> <p>The Prepetition First Lien Agent and the Prepetition Second Lien Agent entered into that certain Intercreditor Agreement, dated as of July 21, 2021 (as amended by that certain Consent and Amendment No. 1 to Intercreditor Agreement, dated as of December 28, 2022, and as further amended, restated, amended and restated, supplemented or otherwise modified through the Petition Date, the “<u>Prepetition Intercreditor Agreement</u>”), which governs certain rights, interests, obligations, priorities and positions as between the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders with respect to the assets and properties of the Debtors and the Prepetition Secured Obligors.</p> <p>The Prepetition Secured Loan Obligations constitute legal, valid, binding and non-avoidable obligations of the Prepetition Secured Obligors, enforceable in accordance with the terms of the applicable Prepetition Secured Loan Documents and subject to the terms of the Prepetition Intercreditor Agreement. No offsets, recoupments, challenges, objections, defenses to, counterclaims to, or claims or causes of action that could reduce the amount or ranking of, the Prepetition Secured Loan Obligations exist. No portion of the Prepetition Secured Liens (as defined below) or Prepetition Secured Loan Obligations (including any interest or fees owed thereunder) is subject to set-off, avoidance, impairment, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), counterclaims, recoupment, defenses, cross-claims or any other challenges under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity. The Prepetition Secured Loan Documents are valid and enforceable by the Prepetition Secured Lenders against each of the Prepetition Secured Obligors.</p> <p>To secure the Prepetition Secured Loan Obligations, the Prepetition Secured Obligors entered into various security and collateral documents pursuant to and in connection with the Prepetition Secured Loan Documents, pursuant to which the Prepetition Secured Lenders were granted the benefit of valid, binding, perfected, enforceable, liens and security interests in the Prepetition Collateral, which such liens and security interests are senior in right, priority, operation and effect to all other interests in the Prepetition Collateral (subject to the relative priorities among the Prepetition Secured Lenders under the Prepetition Intercreditor Agreement) and subject to the Prepetition Permitted Liens, in all respects, notwithstanding any provisions of the Uniform Commercial Code or any other federal, state or foreign law (the “<u>Prepetition Secured Liens</u>”). The Prepetition Secured Liens provide the Prepetition Agents, for and on behalf of the Prepetition Secured Lenders, subject to the terms of the Prepetition Intercreditor Agreement, with valid, binding, properly perfected, enforceable, first-priority liens, and security interests in all property described in the Prepetition Secured Loan Documents, including, without limitation, Cash Collateral and the “Collateral” (as defined in the applicable Prepetition Secured Loan Documents) (collectively, the “<u>Prepetition Collateral</u>”), and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value. All cash of the Debtors and cash proceeds of the Prepetition Collateral, including all such cash and cash proceeds of such Prepetition Collateral held at any time and from time to time in any of the Debtors’ securities accounts and banking, checking, or other deposit accounts with financial institutions (in each case, other than trust, escrow, payroll, and custodial funds held</p>

Bankruptcy Code	Summary of Material Terms
	<p>as of the Petition Date in properly established trust, escrow, payroll, and custodial accounts), are and will be Cash Collateral of the Prepetition Secured Lenders.</p> <p>The Prepetition Secured Liens (a) are valid, binding, properly perfected, enforceable and non-avoidable liens on and security interests in the Prepetition Collateral; (b) are not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, offset, counterclaim, defense, “claim” (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind by any person or entity; (c) subject to the preservation of rights provided in paragraph 15 of this Interim Order, entitle the Prepetition Agents (acting at the direction of the applicable Prepetition Secured Lenders) to credit bid the entirety of the Prepetition Secured Loan Obligations pursuant to section 363(k) of the Bankruptcy Code without further challenges from the Debtors or any other party and implemented by the Prepetition Secured Lenders in their absolute discretion; and (d) are subject and subordinate only to (1) the Carve Out (as defined below), (2) the DIP Liens (as defined below), (3) the Adequate Protection Liens (as defined below), and (4) valid and enforceable liens and encumbrances in the Prepetition Collateral (if any) that were expressly permitted to be senior to the Prepetition Secured Lenders’ liens under the applicable Prepetition Secured Loan Documents, that are valid, properly perfected, enforceable, and non-avoidable as of the Petition Date or perfected following the Petition Date as permitted by section 546 of the Bankruptcy Code and that are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (foreign or domestic) (collectively the “Prepetition Permitted Liens”), and the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Secured Loan Documents or the Debtors, and the Debtors irrevocably waive, discharge and release, for themselves and their estates, any right to challenge or contest, in any way, the scope, extent, perfection, priority, validity, non-avoidability, and enforceability of the Prepetition Secured Liens or the validity, enforceability, or priority of payment of the Prepetition Secured Loan Obligations and the Prepetition Secured Loan Documents. The Prepetition Secured Liens were granted to the Prepetition Secured Lenders for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of loans, commitments, and/or other financial accommodations under the Prepetition Secured Loan Documents. Pursuant to and as more particularly described in the Prepetition Secured Loan Documents, the Prepetition Secured Liens are valid, binding, properly perfected, enforceable, non-avoidable, first-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral), and are senior in right, priority, operation and effect to all other interests in the Prepetition Collateral (subject to the relative priorities among the Prepetition Secured Lenders under the Prepetition Intercreditor Agreement) and subject to the Prepetition Permitted Liens, in all respects, notwithstanding any provisions of the Uniform Commercial Code or any other Federal, State or foreign law. The Prepetition Secured Loan Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.</p> <p>Events of Default (under and as defined in each of the Prepetition Financing Agreements) have occurred and are continuing under the Prepetition Secured Loan Documents. The Prepetition Secured Lenders expressly reserve all of their respective rights, powers, privileges, and remedies under the Prepetition Secured Loan Documents with respect to such existing Events of Default.</p>

Bankruptcy Code	Summary of Material Terms
	<p>Subject to the Carve-Out, the liens and security interests granted to the DIP Lenders shall be valid, binding, properly perfected, enforceable and non-avoidable liens against the Debtors</p> <p><i>See Interim Order ¶ E (i) - (vii)</i></p>
<p><b>Waiver/Modification of Applicability of Non-bankruptcy Law Relating to Perfection or Enforceability of Liens</b> Bankruptcy Rule 4001(c)(1)(B)(vii)</p>	<p>The Prepetition Secured Loan Obligations constitute legal, valid, binding and non-avoidable obligations of the Prepetition Secured Obligors, enforceable in accordance with the terms of the applicable Prepetition Secured Loan Documents and subject to the terms of the Prepetition Intercreditor Agreement. No offsets, recoupments, challenges, objections, defenses to, counterclaims to, or claims or causes of action that could reduce the amount or ranking of, the Prepetition Secured Loan Obligations exist. No portion of the Prepetition Secured Liens (as defined below) or Prepetition Secured Loan Obligations (including any interest or fees owed thereunder) is subject to set-off, avoidance, impairment, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), counterclaims, recoupment, defenses, cross-claims or any other challenges under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity. The Prepetition Secured Loan Documents are valid and enforceable by the Prepetition Secured Lenders against each of the Prepetition Secured Obligors.</p> <p><i>See Interim Order ¶ E(iii)</i></p>
<p><b>Challenge Period</b> Bankruptcy Rule 4001(c)(1)(B)  Local Rule 4001-2(a)(i)(B)</p>	<p>Seventy-five days following the entry of the Interim Order with respect to parties interest with requisite standing other than the Committee and sixty (60) calendar days after entry of the Interim Order with respect to the Committee.</p> <p><i>See Interim Order ¶ 15</i></p>
<p><b>Waiver/Modification of the Automatic Stay</b> Bankruptcy Rule 4001(c)(1)(B)(iv)</p>	<p>The Interim Order includes a customary waiver/modification of the automatic stay to permit the Debtors to grant the liens and security interests to the DIP Secured Parties, make payments on account of the Adequate Protection Obligations, and perform other acts necessary in connection with the DIP Loan Documents, including entering into the DIP Facility.</p> <p><i>See Interim Order ¶ 36</i></p>

### **The Debtors' Prepetition Capital Structure and Need for the DIP Facility**

#### **I. Prepetition Capital Structure.**

17. As of the Petition Date, the Debtors have an aggregate principal amount of approximately \$423.5 million in funded debt obligations, consisting of the First Lien Term Loan and the Second Lien Term Loans (together, the "Prepetition Financing Agreements").

18. Debtors Progexion Holdings, Inc., Credit.com, Inc., eFolks Holdings, Inc., and Creditrepair.com Holdings, Inc. (the "Prepetition Term Loan Borrowers") are borrowers under the Prepetition Financing Agreements, each as more fully described below:

<i>Funded Debt</i>	<i>Approximate Amount Outstanding</i>	<i>Principal</i>
<b>First Lien Term Loan</b>	<b>\$243.5 million</b>	
<b>Second Lien Term Loan</b>	<b>\$180.0 million</b>	
<b>Total Funded Debt Obligations</b>	<b>\$423.5 million</b>	

19. Debtor PGX Holdings, Inc. also has 274,595,739 shares of common stock issued and outstanding as of the Petition Date. Separately, Debtor John C. Heath, Attorney at Law PC has 1,000 shares of common stock issued and outstanding as of the Petition Date.

**A. First Lien Facility.**

20. Debtor PGX Holdings, Inc., as parent and guarantor, and Debtors Progrexion Holdings, Inc., Credit.com, Inc., eFolks Holdings, Inc., and CreditRepair.com Holdings, Inc., as borrowers, and Debtors Progrexion Marketing, Inc., Progrexion Teleservices, Inc., Progrexion ASG, Inc., Progrexion IP, Inc., eFolks, LLC, CreditRepair.com, Inc., and Credit Repair UK, Inc., as guarantors, the lenders party thereto from time to time (the “First Lien Lenders”), and Blue Torch Finance LLC (“Blue Torch”), as administrative agent and collateral agent, are parties to that certain First Lien Financing Agreement, dated as of July 21, 2021,<sup>5</sup> providing for the PGX Debtors’ first-lien term loan credit facility (the “First Lien Facility”).

21. Pursuant to the First Lien Credit Agreement, the First Lien Facility is secured on a first-priority basis (subject to customary exceptions) by a lien on substantially all of the assets of the PGX Debtors and the equity of each of the subsidiaries of Debtor PGX Holdings, Inc. The maturity date of the First Lien Facility is July 21, 2026. As of the Petition Date, approximately \$243 million of principal remains outstanding under the First Lien Facility.

<sup>5</sup> For the avoidance of doubt, such agreement was amended by Amendment No. 1 to First Lien Financing Agreement, dated as of July 20, 2022, as further amended by Amendment No. 2 to First Lien Financing Agreement, dated as of December 28, 2022, as further amended by Amendment No. 3 to First Lien Financing Agreement, dated as of March 31, 2023 and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time (the “First Lien Credit Agreement”).

**B. Second Lien Facility.**

22. Debtor PGX Holdings, Inc., as parent and guarantor, and Debtors Progexion Holdings, Inc., Credit.com, Inc., eFolks Holdings, Inc., and CreditRepair.com Holdings, Inc., as borrowers, and Debtors Progexion Marketing, Inc., Progexion Teleservices, Inc., Progexion ASG, Inc., Progexion IP, Inc., eFolks, LLC, CreditRepair.com, Inc., and Credit Repair UK, Inc., as guarantors, the lenders party thereto from time to time (the “Second Lien Lenders” and, together with the First Lien Lenders, the “Prepetition Lenders”), and Prospect Capital, as administrative agent and collateral agent, are parties to that certain Second Lien Financing Agreement, dated as of July 21, 2021,<sup>6</sup> providing for the PGX Debtors’ second-lien term loan credit facility (the “Second Lien Facility” and, together with the First Lien Facility, the “Prepetition Facilities”).

23. Pursuant to the Second Lien Credit Agreement, and as subordinated to the First Lien Credit Agreement under that certain Intercreditor Agreement, dated as of July 21, 2021,<sup>7</sup> the Second Lien Facility is secured on a second-priority basis (subject to customary exceptions) relative to the First Lien Facility by a lien on substantially all of the assets of the PGX Debtors and the equity of each of the subsidiaries of Debtor PGX Holdings, Inc. The maturity date of the Second Lien Facility is July 21, 2027. As of the Petition Date, approximately \$180 million of principal remains outstanding under the Second Lien Facility.

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<sup>6</sup> As amended by Amendment No. 1 to Second Lien Financing Agreement, dated as of December 28, 2022 and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time (the “Second Lien Credit Agreement”).

<sup>7</sup> As amended by that certain Consent and Amendment No. 1 to Intercreditor Agreement, dated as of December 28, 2022, and as further amended, restated, supplemented or otherwise modified from time to time (the “Intercreditor Agreement”).

**C. PGX's Equity.**

24. PGX is a privately held corporation. The majority stockholder is PGX Topco LLC, a subsidiary of Prospect Capital.

25. Debtor John C. Heath, Attorney at Law PC is a privately held professional corporation. John C. Heath, Attorney at Law PC has issued 1,000 outstanding shares of common stock. John C. Heath, Esq. owns 990 of the 1,000 outstanding shares and Eric M. Kamerath owns the remaining 10 shares.

**II. Alternative Sources of Financing Are Not Readily Available.**

26. As further described in the Augustine Declaration, the Debtors do not have any alternative sources of financing readily available with terms better than those included in the DIP Facility. The Debtors and their advisors engaged with numerous parties to potentially fund these chapter 11 cases. Specifically, Greenhill contacted approximately 30 third-party financial institutions to determine whether any of these parties would be willing to provide postpetition financing to the Debtors. Of those parties contacted by Greenhill, seven executed an NDA. *See* Augustine Decl. ¶ 9. No party other than the Prepetition Secured Lenders provided the Debtors with an out-of-court or postpetition financing facility. *Id.*

27. The terms of the DIP Facility are reasonable under the circumstances. The DIP Facility is the product of good-faith, robust arm's-length negotiations and is necessary for the Debtors to maximize value on behalf of their constituents in these chapter 11 cases. *See Id.* ¶ 10. Accordingly, the DIP Facility is in the best interests of the Debtors' estates and represents a sound exercise of the Debtors' reasonable business judgment. *See Id.* ¶ 18.

**Basis for Relief**

**I. The Debtors Should Be Authorized to Obtain Postpetition Financing Through the DIP Documents.**

**A. Entry into the DIP Documents Is a Sound Exercise of the Debtors' Business Judgment.**

28. The Court should authorize the Debtors, as a sound exercise of their business judgment, to execute and deliver the DIP Documents and to obtain access to the DIP Facility. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor in possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

29. Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable businessperson would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should

not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code").

30. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) ("Viewed in isolation, several of the terms of the [postpetition financing] might appear to be extreme or even unreasonable. Certainly, many of them favor the DIP Lenders. But, taken in context, and considering the relative circumstances of the parties, the Court does not believe that the terms are unreasonable."); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing that a debtor may have to enter into "hard bargains" to acquire funds for its reorganization). Courts may also appropriately take into consideration noneconomic benefits to a debtor offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the bankruptcy court for the Southern District of New York held that:

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

2009 WL 2902568, at \*4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

31. The Debtors' decision to move forward with the DIP Facility is a sound exercise of their business judgment following an arm's-length process and careful evaluation of alternatives.

Specifically, the Debtors and their advisors determined that the postpetition financing will create adequate liquidity necessary to administer these chapter 11 cases and to conduct a robust marketing process for substantially all of the Debtors' assets. The Debtors negotiated the DIP Credit Agreement and related DIP Documents with the DIP Lenders in good faith, at arm's length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available under the circumstances. *See* Augustine Decl. ¶ 18. Importantly, the DIP Facility is a key component of the consensus reached with the Prepetition Secured Lenders pursuant to the Restructuring Support Agreement and represents a key step in moving these chapter 11 cases forward toward culmination of the sale process. Accordingly, the Court should authorize the Debtors' entry into the DIP Documents, as it is a sound exercise of the Debtors' business judgment.

**B. The Debtors Should Be Authorized to Grant Liens and Superpriority Claims.**

32. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Documents pursuant to section 364(c) and section 364(d) of the Bankruptcy Code. More specifically, the Debtors propose to provide to the DIP Lenders, subject to the Carve Out, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on the DIP Collateral, which include substantially all of the Debtors' assets, and, specifically, (a) a priming security interest and lien on the Prepetition Collateral to the extent such Prepetition Collateral is subject to prepetition liens that secure the prepetition facilities of the Prepetition Secured Lenders (as defined in the DIP Documents), (b) a junior security interest and lien to all property of the Debtors that is subject to Prepetition Permitted Liens, (c) a first lien priority senior security interest

in all property of the Debtors that is not subject to a valid, perfected and non avoidable lien, subject to and as further provided for in the DIP Documents and the Interim Order.

33. The statutory requirement for obtaining postpetition credit under section 364(c) of the Bankruptcy Code is a finding, made after notice and hearing, that a debtor is “unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code].” 11 U.S.C. § 364(c). *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained). Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- A. the debtor is unable to obtain unsecured credit under section 364(b) of the Bankruptcy Code—*i.e.*, by allowing a lender only an administrative claim;
- B. the credit transaction is necessary to preserve the assets of the estate; and
- C. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders.

*In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987); *see also L.A. Dodgers LLC*, 457 B.R. at 312–13 (Bankr. D. Del. 2011); *Ames Dep’t Stores*, 115 B.R. at 37–40 (Bankr. S.D.N.Y. 1990); *In re St. Mary Hosp.*, 86 B.R. 393, 401 (Bankr. E.D. Pa. 1988).

34. As described above and set forth in the Augustine Declaration, the Debtors recognized that it would be particularly difficult to secure financing because time was limited, all of the Debtors’ cash and material assets are encumbered by existing liens under their prepetition debt, and the Prepetition Secured Lenders indicated that they would not consent to a “priming” DIP financing provided by a third party. *See* Augustine Decl. at ¶ 8. In light of this, the Debtors and Greenhill understood that any third-party DIP financing would require engaging in a protracted and costly priming fight or valuation dispute with the Prepetition Secured Lenders at the very

outset of these chapter 11 cases. *Id.* Regardless of the prospects of success, the expense and disruption associated with complex litigation at the beginning of the case would seriously jeopardize the Debtors' restructuring efforts, as already strained liquidity would be required to fund such a fight. *Id.* Such litigation would also have had a disastrous effect on the Debtors' effort to garner consensus to swiftly drive these cases to a successful conclusion.

35. Absent the DIP Facility, which will provide sufficient liquidity to administer these chapter 11 cases, the value of the Debtors' estates would be significantly impaired to the detriment of all stakeholders. Given the Debtors' circumstances, the Debtors believe that the terms of the DIP Facility, including the requirement that Lexington Law be included as a guarantor under the DIP Facility, as set forth in the DIP Credit Agreement, are fair, reasonable, and adequate, all as more fully set forth below. For all these reasons, the Debtors have met the standard for obtaining postpetition financing under section 364(c) of the Bankruptcy Code.

36. In the event that a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, section 364(c) of the Bankruptcy Code provides that a court may:

authorize the obtaining of credit or the incurring of debt (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code]; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). As described above, the Debtors are unable to obtain unsecured credit. Therefore, approving superpriority claims in favor of the DIP Lenders is reasonable and appropriate.

37. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is "unable to obtain such credit otherwise" and "there is

adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). The Debtors may incur “priming” liens under the DIP Facility to the extent such DIP Collateral is subject to prepetition liens that secure the Prepetition Term Loans of the Prepetition Secured Lenders. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”). Accordingly, the Debtors may incur “priming” liens under the DIP Facility if either (a) their Prepetition Secured Lenders have consented or (b) the Prepetition Secured Lenders’ interests in collateral are adequately protected.

38. Here, the Prepetition Secured Lenders have affirmatively consented to the DIP Facility and actively participated in facilitating the proposed DIP Facility. Moreover, as set forth more fully in the Interim Order, the Debtors propose to provide an adequate protection package to protect the interests of the Prepetition Secured Lenders. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

**C. No Comparable Alternative to the DIP Facility Is Reasonably Available.**

39. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa 1987). Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088

(4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (holding that the bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that the section 364 requirement was met); *Ames Dep't Stores*, 115 B.R. at 37–39 (finding that the debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b) of the Bankruptcy Code).

40. The Debtors do not believe that alternative sources of financing are reasonably available given the Debtors' unsuccessful solicitation of alternative financing proposals. *See* Augustine Decl. ¶ 17. The Debtors and their advisors have searched for actionable alternative proposals and, in this regard, there were no parties other than the Prepetition Secured Lenders who came forward with a debtor-in-possession financing proposal. Thus, there are no better options. *See Id.* The Debtors have determined that the DIP Facility provides the most favorable terms while reducing execution risks and providing the incremental liquidity necessary to conduct a robust marketing process during the chapter 11 cases. *Id.* Simply put, the DIP Facility provides the Debtors with the liquidity they need at the lowest cost available while simultaneously placing the Debtors on an optimal path to pursue a value-maximizing marketing and sale process pursuant to the Restructuring Support Agreement. Therefore, the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.

**D. The Debtors Should Be Authorized to Use the Cash Collateral.**

41. Section 363 of the Bankruptcy Code governs the Debtors' use of property of their estates, including Cash Collateral. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor

may use cash collateral as long as “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). Here, the DIP Lenders and the Prepetition Secured Lenders consent or are deemed to consent to the Debtors’ use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order.

42. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont’l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case by case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the “determination of whether there is adequate protection is made on a case by case basis”); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at \*6 (Bankr. D. Del. Dec. 7, 2012) (same); *In re N.J. Affordable Homes Corp.*, 2006 WL 2128624, at \*14 (Bankr. D.N.J. June 29, 2006) (holding that “the circumstances of the case will dictate the necessary relief to be given”); *In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at \*2 (Bankr. D. Del. Feb. 18, 1992) (holding that “what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis”); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”)).

43. As set forth in the Interim Order, the Debtors propose to provide the Prepetition Secured Lenders with certain forms of adequate protection to protect against the postpetition diminution in value of the Cash Collateral resulting from the use, sale, or lease of the Cash Collateral by the Debtors, priming of their security interests and liens by the DIP Liens, and the imposition of the automatic stay (collectively, the “Adequate Protection Obligations”) and Adequate Protection Payments:

- a. payment of all reasonable out-of-pocket fees, costs and expenses of the Prepetition Agents (as defined in the DIP Credit Agreement) and the Prepetition Secured Lenders;
- b. replacement liens to the extent of any postpetition diminution in value of the Prepetition Secured Lenders’ interest in the Collateral resulting from the use, sale or lease by the Debtors of such Prepetition Collateral and/or the imposition of the automatic stay, which liens will be junior to DIP Liens and senior to Prepetition Secured Liens;
- c. superpriority administrative expense claims to the extent of any postpetition diminution in value of the Prepetition Secured Lenders’ interest in the Collateral resulting from the use, sale or lease by the Debtors of such Prepetition Collateral and/or the imposition of the automatic stay, which claims will be junior to the DIP Obligations and be payable from and have recourse to all assets and property of the Debtors; and
- d. reasonable access to the Debtors’ books and records.

44. The Debtors submit that the proposed Adequate Protection Obligations are sufficient to protect the Prepetition Secured Lenders from any potential diminution in value to the Cash Collateral. In light of the foregoing, the Debtors further submit, and the Prepetition Secured Lenders agree, that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Secured Lenders are appropriate. Thus, the Debtors’ provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these chapter 11 cases to ensure the Debtors are able

to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates.

**E. The Roll-Up is Appropriate.**

45. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.”).

46. Repaying prepetition debt (often referred to as a “roll-up”) is a common feature in debtor-in-possession financing arrangements. The importance of “roll-up” features in DIP facilities has been repeatedly recognized by courts in this district and others, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (authorizing an approximately \$120 million DIP facility, including a \$60 million roll-up of the prepetition term loan); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. Jul. 20, 2020) (authorizing an approximately \$50 million DIP facility including a \$22 million roll-up); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Jul. 23, 2019) (authorizing an approximately \$240 million DIP facility, including a \$100 million roll-up of the prepetition term loan and an additional \$140 million in

incremental liquidity, pursuant to interim order); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (authorizing an approximately \$1,230 million DIP, including a full roll-up of the prepetition ABL outstanding principal of \$639 million and an additional \$250 million in additional liquidity, pursuant to interim order); *In re Remington Outdoor Co., Inc.*, No. 18-10684 (BLS) (Bankr. D. Del. Mar. 28, 2018) (authorizing approximately \$338 million DIP and a roll-up of approximately \$150 million, including a full ABL roll-up of \$114 million, pursuant to interim order).<sup>8</sup>

47. As set forth above, the DIP Credit Agreement provides that the DIP Facility will be used to roll up, subject to entry of the Final Order, \$39.85 million of the Debtors' prepetition debt under their capital structure and, subject to entry of the Interim Order, \$2.9 million that represents the Emergency Bridge that was provided to the Debtors during the week prior to the Petition Date. This repayment is a sound exercise of the Debtors' business judgment and is a material component of the structure of the DIP Facility. Without continued access to the additional liquidity provided under the DIP Facility, the Debtors will be unable to fund the administration of these chapter 11 cases and the sale process.

48. As discussed herein and in the Augustine Declaration, the Roll-Up was the subject of arm's-length and good-faith negotiations between the Debtors and the DIP Lenders, is an integral component of the overall terms of the DIP Facility, and was required by the DIP Lenders as considerations for the extension of postpetition financing. *See* Augustine Declaration ¶ 14. Additionally, the Interim Roll-Up was a necessary condition for the DIP Lenders to agree to provide the Emergency Bridge on a prepetition basis. The Emergency Bridge was required for the

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<sup>8</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

Debtors to continue funding their operations pending the filing of these chapter 11 cases and obtaining access to the DIP Facility. *See Id.* For these reasons and because no other party has put forward an actionable financing proposal, the granting of the Roll-Up is reasonable, appropriate, a sound exercise of the Debtors' business judgment, and ultimately in the best interests of all stakeholders given the alternatives.

**II. The Debtors Should Be Authorized to Pay the Fees Required by the DIP Agent and the DIP Lenders Under the DIP Documents.**

49. Under the DIP Credit Agreement, the Debtors will, subject to Court approval, pay certain fees to each of the DIP Agent and DIP Lenders. These fees are customary and reasonable under the circumstances. Additionally, they are comparable to fees agreed upon in similar DIP financings. There is ample justification for this Court to approve the payment of such fees, which are part of the DIP Documents. Thus, they should not be viewed separately but rather as a part of the overall, substantial benefits provided under the DIP Facility.

**III. The DIP Lenders Should Be Deemed Good-Faith Lenders Under Section 364(e) of the Bankruptcy Code.**

50. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

51. As explained herein and the Augustine Declaration, the DIP Documents are the result of the Debtors' reasonable and informed determination that the DIP Lenders offered the

most favorable terms on which to obtain vital postpetition financing, and arm's-length, good-faith negotiations between the Debtors and the DIP Secured Parties (as defined in the DIP Documents). The DIP Documents are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, the DIP Orders, and the DIP Documents. Furthermore, no consideration is being provided to any party to the DIP Documents other than as described herein.

52. Accordingly, the Court should find that the DIP Lenders are “good faith” lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded therein.

#### **IV. The Automatic Stay Should Be Modified on a Limited Basis.**

53. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to the extent necessary to permit the DIP Agent to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, deposit account control agreements or to take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder, including, without limitation, with respect to the DIP Liens and the Adequate Protection Liens.

54. Stay modifications of this kind are ordinary and standard features of debtor in possession financing arrangements, and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g., In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (modifying automatic stay as necessary to effectuate the terms of the order and following occurrence of an event of default); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (same); *In re Town*

*Sports Int'l, LLC*, No. 12-12168 (CTG) (Bankr. D. Del. Oct. 2, 2020) (same); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. Jun. 15, 2020) (same); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2020) (same).<sup>9</sup>

**V. Failure to Obtain Immediate Interim Access to the DIP Facility Would Cause Immediate and Irreparable Harm.**

55. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

56. For the reasons noted above and in the First Day Declaration, the Debtors have an immediate need for the liquidity provided by the DIP Facility. *See* First Day Decl. ¶ 59. The proposed DIP Facility is critical to the Debtors' ability to fund its operations and the sale marketing process while providing sufficient liquidity at the outset of these chapter 11 cases. *See Id.* The DIP Facility is an essential component to reassure vendors and business partners, protect normal- course operations while the Debtors pursue a successful sale process during the pendency of these chapter 11 cases. Without such funding, the Debtors would be unable to maintain their business while conducting the marketing process. *Id.*

57. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry of the Interim Order until the Final Hearing, to receive initial funding under the DIP Facility. This relief will enable the Debtors to

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<sup>9</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

**Request for Final Hearing**

58. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and in no event after twenty-one days after the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to this motion.

**Notice**

59. The Debtors will provide notice of this motion to: (a) the United States Trustee; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the United States Department of Justice; (h) the DIP Agent and counsel thereto; (i) First Lien Credit Agreement Agent and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). As this motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

60. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors request that the Court enter the DIP Orders, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: June 5, 2023  
Wilmington, Delaware

*/s/ Domenic E. Pacitti*

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**KLEHR HARRISON HARVEY  
BRANZBURG LLP**

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*Proposed Co-Counsel to the Debtors and Debtors in  
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**EXHIBIT A**

**Augustine Declaration**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
PGX HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-10718 (CTG)
Debtors.	)	(Joint Administration Requested)
	)	

**DECLARATION OF NEIL A. AUGUSTINE  
IN SUPPORT OF THE MOTION OF DEBTORS FOR  
ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING  
THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND  
(B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND SUPERPRIORITY  
ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING THE AUTOMATIC STAY,  
(IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

I, Neil A. Augustine, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration (this “Declaration”) in support of the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “DIP Motion”).<sup>2</sup>

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PGX Holdings, Inc. (2510); Credit Repair UK, Inc. (4798); Credit.com, Inc. (1580); Creditrepair.com Holdings, Inc. (7536); Creditrepair.com, Inc. (7680); eFolks Holdings, Inc. (5213); eFolks, LLC (5256); John C. Heath, Attorney At Law PC (8362); Progrexion ASG, Inc. (5153); Progrexion Holdings, Inc. (7123); Progrexion IP, Inc. (5179); Progrexion Marketing, Inc. (5073); and Progrexion Teleservices, Inc. (5110). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111.

<sup>2</sup> A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Chad Wallace, Chief Executive Officer of PGX Holdings, Inc., in Support of Chapter 11 Filing and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith on June 4, 2023 (the “Petition Date”) and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration, the DIP Motion, or the Interim Order (as defined in the Motion), as applicable.

2. I am a Vice Chairman and Co-Head of North American Financing Advisory and Restructuring at Greenhill & Co., LLC (“Greenhill”), a leading independent investment bank, which has its principal office at 1271 Avenue of the Americas, New York, NY 10020.

3. Greenhill and its senior professionals have extensive experience working with financially troubled companies in complex financial restructurings, both out-of-court and bankruptcy proceedings. Greenhill and its principals have been involved as advisor to various parties in interest and constituencies in many reorganization cases and asset sales. Over the last 33-plus years, my transactions experience has ranged from out-of-court restructurings to in-court insolvencies in the U.S., Europe, Canada, Brazil, Chile and Mexico, including involvement in the bankruptcy proceedings of the following companies, among others: American Commercial Lines Inc., Atlantic Express Transportation Group, Answers Corporation, Avaya Inc., Blockbuster Inc., Cengage Learning, Inc., Cenveo, Inc., Cirque du Soleil Canada Inc., David’s Bridal, Inc., Destination Maternity Corporation, EXCO Resources, Inc., Fairpoint Communications, Inc., Fusion Connect, Inc., Genco Shipping & Trading Limited, Global Geophysical Services, Inc., Global Eagle Entertainment Inc., GT Advanced Technologies, Inc., The Gymboree Corporation, Harry & David Holdings, Inc., Inner City Media Corporation, Innovative Communication Corporation, LATAM Airlines Group S.A., LifeCare Holdings, LLC, M&G USA Corporation, Milacron Holdings Inc., Momentive Performance Materials, Motor Coach Industries International, Inc., MTE Holdings LLC, Nassau Broadcasting Partners, L.P., New World Pasta Company, Performance Sports Group Ltd., rue21, inc., The Roman Catholic Diocese of Rockville Centre, New York, Skillsoft Corporation, Trident Resources Corp., Trump Entertainment Resorts, Inc., VeraSun Energy Corporation, Werner Co., and WestPoint Stevens Inc.

**Background and Qualifications**

4. I have been employed by Greenhill since March 2018. Prior to joining Greenhill, I was an Executive Vice Chairman and Co-Head of North American Debt Advisory and Restructuring at Rothschild Inc., where I was employed for seventeen years. Prior to Rothschild Inc., I was the Group Portfolio Manager for the Distressed Debt Group of Morgens, Waterfall, Vintiadis & Company Inc., and prior to that, I was the Director of Distressed Debt Research at Lehman Brothers, Inc. and was the Director of Research at Whippoorwill Associates, Inc. I began my career at Chemical Bank and prior to entering the principal business, I was one of the founding members of The Blackstone Group’s Restructuring and Reorganization Financial Advisory Department. I hold a B.A. degree and an M.B.A. from the University of Rochester.

5. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with other members of the Greenhill team, the Debtors’ management team, and the Debtors’ other advisors, my review of relevant documents and information concerning the Debtors’ operations, financial affairs, and restructuring initiatives, or my opinions based upon my experience and knowledge. If called as a witness, I could and would testify competently to the facts set forth in this Declaration on that basis. I am authorized to submit this Declaration on behalf of the Debtors. I am not being specifically compensated for this testimony other than through payments received by Greenhill as a professional proposed to be retained by the Debtors, subject to approval by this Court. I am over the age of 18 years and authorized to submit this Declaration on behalf of the Debtors.

**Greenhill Retention**

6. On March 29, 2023, the Debtors retained Greenhill & Co., LLC (“Greenhill”) as their proposed investment banker. Since commencing its engagement, Greenhill has, among other things, led the Debtors’ marketing processes to obtain debtor-in-possession financing. Through

this period of advising the Debtors, members of the Greenhill team and I are familiar with the Debtors' capital structure, liquidity needs, and business operations.

**The Debtors' Efforts to Secure Financing**

7. I understand that the Debtors have been working for years to evaluate paths forward in response to the CFPB Litigation and the significant financial stress brought about by this litigation, among other factors. Despite these efforts, in March of 2023, the Debtors suffered an adverse ruling in the CFPB Litigation, exposing the Debtors to alleged damages of nearly \$3 billion and forcing the Debtors to shut down approximately 80% of their business. At that time, interest payments on prepetition facilities were quickly coming due, and I understand that the Debtors requested that the existing second lien lenders fund incremental borrowings under the prepetition delayed draw term loan at that time; however, the second lien lenders did not fund, citing that the Debtors had not satisfied all conditions precedent to such advance. Unable to secure a comprehensive solution or bridge financing, Greenhill and the Debtors' other advisors pivoted to negotiate a comprehensive in-court restructuring transaction.

8. Prior to commencing a DIP financing process, the Debtors recognized that it would be particularly difficult to secure financing because the liquidity runway was limited, substantially all of the Debtors' cash and material assets are encumbered by existing liens under their prepetition debt, and the Prepetition Secured Lenders indicated that they would not consent to a "priming" DIP financing provided by a third party. In light of this, Greenhill understood that any third-party DIP financing would require engaging in a protracted and costly priming fight or valuation dispute with their prepetition lenders at the very outset of these chapter 11 cases. And regardless of the prospects of success, the expense and disruption associated with complex litigation at the beginning of the cases would seriously jeopardize the Debtors' restructuring efforts, as already strained liquidity would be required to fund such a fight.

9. Notwithstanding these concerns, the Debtors conducted a marketing process designed to identify other parties that may be interested in providing postpetition financing to the Debtors. Specifically, my team and I contacted approximately 30 third-party financial institutions to determine whether any of these parties would be willing to provide postpetition financing to the Debtors. Of those parties contacted by Greenhill, 7 executed an NDA. No party other than the DIP Lenders provided the Debtors with a proposal for a debtor-in-possession financing facility.

10. In parallel with that process, the Debtors began engaging with their creditors regarding a holistic restructuring and recapitalization transaction to be effectuated through a sale within a chapter 11 process. Critical to that path forward was debtor-in-possession financing, and the Debtors started engaging with the DIP Lenders regarding a potential financing that would provide funding of the chapter 11 cases and the marketing of the Debtors' assets. As part of these discussions, the Debtors and their advisors pressed the DIP Lenders for a greater amount of postpetition financing and a longer term of the DIP Facility, among other material terms. The Debtors and their advisors held numerous discussions and negotiations with the DIP Lenders and their respective advisors, exchanging several term sheets and mark-ups. As a result, the DIP Facility's terms and conditions improved markedly relative to the DIP Lenders' initial proposals to the Debtors' benefit. Ultimately, after weeks of extensive arm's-length negotiations, the Debtors secured the proposed DIP Facility and the use of Cash Collateral from their prepetition secured lenders and simultaneously negotiated two stalking horse purchase agreements for substantially all the assets of the Debtors and entered into the Restructuring Support Agreement.

11. The DIP Facility, the use of Cash Collateral, the stalking horse purchase agreements, and Restructuring Support Agreement are complementary and are all a result of extensive negotiation the Debtors had with the DIP Lenders. Together, they provide a foundation

for the Debtors' marketing process and path forward. The DIP Facility will be secured by a perfected superpriority first priming lien on the collateral securing the prepetition first lien obligations (subject to Prepetition Permitted Liens), a perfected first priority lien on unencumbered property (including all of the previously unencumbered assets of Lexington Law) and on the Controlled Accounts, and a perfected junior priority lien on all DIP Collateral that secures obligations that are subject to Prepetition Permitted Liens, in each case subject to the Carve Out. As such, the DIP Facility does not purport to prime the Prepetition Permitted Liens.

12. As a result of this process and my knowledge of the marketplace for postpetition financing, I believe the DIP Facility represents the best available financing under the circumstances.

13. The Prepetition Secured Parties also consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order. In light of the foregoing, I believe, and the Prepetition Secured Parties agree, that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Secured Parties are appropriate.

**The Fees, Rollup, and Milestones Are Fair and Reasonable Under the Circumstances**

14. The DIP financing negotiations centered around, among other things, the fees and roll-up of approximately \$42.75 million of the DIP Lenders' prepetition debt (the "Roll-Up Amount") contemplated by the proposed DIP Facility, including (a) a \$2.9 million roll-up, which represents emergency financing provided the week before the Petition Date that was necessary to allow the Debtors to operate prior to and transition smoothly into chapter 11 (the "Emergency Bridge"), subject to entry of the Interim Order, and (b) a \$39.85 million roll-up, subject to entry of the Final Order. These fees and the Roll-Up Amount were the subject of hard fought, arm's-length, and good-faith negotiations between the Debtors and the DIP Lenders, are integral

components of the overall terms of the DIP Facility, and were required by the DIP Lenders as consideration for the extension of postpetition financing. The DIP Lenders were unwilling to move forward on any proposal that did not include the Roll-Up Amount. The Roll-Up of the Emergency Bridge is also critical as the DIP Lenders would not have agreed to provide such bridge financing absent such Roll-Up subject to entry of the Interim Order.

15. Given the recent adverse ruling in the CFPB Litigation which forced the Debtors to halt their profitable telemarketing services, adding volatility in their customer receipts and projected cash burn, and the fact no other party has put forward an actionable financing proposal, among other reasons, I believe the fees and Roll-Up Amount are reasonable, consistent with market terms, and appropriate under the circumstances.

16. The DIP Facility is also expressly linked to certain case milestones, that are consistent with the timeline set forth in the Restructuring Support Agreement and sale bidding procedures, and provide a foundation for the Debtors' anticipated chapter 11 process, allowing the parties to continue developing and pursuing a comprehensive marketing process for the Debtors' business. These milestones were required by the DIP Lenders as a condition to providing the DIP Facility and were a critical inducement for the DIP Lenders to provide the Debtors with the liquidity necessary to operate their business and fund these chapter 11 cases. The Debtors believe the milestones are within the range of market and provide adequate time to implement their sale process and broader restructuring.

**The DIP Facility Is Fair and Reasonable Under the Circumstances**

17. The proposed DIP Facility is critical to the Debtors' ability to fund their operations and the marketing process while providing sufficient liquidity without creating a value-destructive "priming fight" or valuation dispute at the outset of these chapter 11 cases. The Debtors do not believe that alternative sources of financing are reasonably available given the circumstances and

the Debtors' unsuccessful solicitation of alternative financing proposals. The Debtors have searched for actionable alternative proposals and, in this regard, the market has spoken. There are no better options.

18. The proposed DIP Facility provides sufficient liquidity to administer these chapter 11 cases. Moreover, I believe the DIP Facility is an essential component to funding the Debtors' operations and providing a path to emergence and is critical to reassure vendors and business partners, as well as protect the Debtors' normal-course operations. As a result, based on my experience with DIP financing transactions, as well as my involvement in the negotiation of the DIP Facility and pursuit of alternative postpetition financing proposals, I believe the DIP Facility, including the milestones, interest rates, fees, and liens included therein, are appropriate and reasonable, are the only viable source of postpetition financing reasonably attainable under the circumstances, and is in the best interests of the Debtors and is necessary to avoid irreparable harm to the Debtors and their estates.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 5, 2023  
New York, New York

*/s/ Neil A. Augustine*

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Neil A. Augustine  
Vice Chairman and Co-Head of Financing Advisory &  
Restructuring for North America  
Greenhill & Co., LLC

*Proposed Investment Banker to the Debtors*

**EXHIBIT B**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
PGX HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-10718 (CTG)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**INTERIM ORDER (I) AUTHORIZING THE  
DEBTORS TO (A) OBTAIN POSTPETITION FINANCING  
AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND  
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING  
ADEQUATE PROTECTION, (IV) MODIFYING THE AUTOMATIC STAY,  
(V) SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

Upon the *Motion of Debtors Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. [\_\_\_]] (the “**Motion**”) filed by the above-captioned debtors (the “**Debtors**”) in the above-captioned case (the “**Chapter 11 Cases**”), pursuant to sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”) and Rules 2002-1, 4001-2 and

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: PGX Holdings, Inc. (2510); Credit Repair UK, Inc. (4798); Credit.com, Inc. (1580); Creditrepair.com Holdings, Inc. (7536); Creditrepair.com, Inc. (7680); eFolks Holdings, Inc. (5213); eFolks, LLC (5256); John C. Heath, Attorney At Law PC (8362); Progrexion ASG, Inc. (5153); Progrexion Holdings, Inc. (7123); Progrexion IP, Inc. (5179); Progrexion Marketing, Inc. (5073); and Progrexion Teleservices, Inc. (5110). The location of the debtors’ service address for purposes of these chapter 11 cases is: 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111.

9013-1(m) of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (as amended, the “**Local Rules**”), seeking, among other things:

- A. authorization for the Debtors to receive senior secured postpetition financing on a superpriority basis in the form of a senior secured, super priority multiple draw term loan facility substantially in the form of **Exhibit A**, attached hereto (the “**DIP Facility**” and the DIP Lenders’ commitments under the DIP Facility, the “**DIP Commitments**”) in an aggregate principal amount of up to \$19,925,000 (the “**New Money DIP Loans**”), consisting of, subject to the DIP Loan Agreement (as defined below), (i) upon entry of this interim order (this “**Interim Order**”), one or more draws in an aggregate principal amount not exceeding \$12,000,000.00 (the “**Interim New Money DIP Loans**”) and (ii) upon entry of the Final Order (as defined below), additional draws in an aggregate principal amount that will not, when combined with amounts advanced prior to such date, exceed the remaining unfunded New Money DIP Loans, (iii) a roll-up (the “**Interim Roll-Up**”), subject to entry of this Interim Order, by the DIP Lenders of their ratable share of Prepetition First Lien Obligations in the amount of \$2,900,000.00 equal to the Prepetition First Lien Obligations advanced to the Loan Parties (as defined in the First Lien Financing Agreement) pursuant to that certain Collateral Agent Advance Letter, dated as of May 31, 2023, by and among the Prepetition First Lien Agent, Prepetition First Lien Lenders and Loan Parties (the “**Interim Roll-Up Amount**”), which amounts represent emergency financing that was necessary to allow the Debtors to operate prior to and transition smoothly into chapter 11 (the “**Emergency Bridge**”) and (iv) a roll-up (the “**Final Roll-Up**”, and together with the Interim Roll-Up, the “**Roll-Up**”), subject to entry of the Final Order, by the DIP Lenders of their ratable share of Prepetition First Lien Obligations in the amount of \$39,850,000.00 (the “**Final Roll-Up Amount**”, and together with the Interim Roll-Up Amount, the “**Roll-Up Amount**”, together with the New Money DIP Loans, the “**Final DIP Loans**”), pursuant to the terms and conditions of this Interim Order, the Final Order (upon entry) and that certain *Superpriority Secured Debtor-in-Possession Financing Agreement* (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the “**DIP Loan Agreement**”<sup>2</sup> together with the schedules and exhibits attached thereto, and all agreements, documents, instruments and amendments executed and delivered in connection therewith, the “**DIP Documents**”), by and among Progexion Holdings, Inc., a Delaware corporation, Credit.com, Inc., a Delaware corporation, eFolks Holdings, Inc., a Delaware corporation and Creditrepair.com Holdings, Inc., a Delaware corporation (collectively, the “**DIP Borrowers**”), John C. Heath, Attorney At Law PC (d/b/a Lexington Law) and the other guarantors party thereto (collectively, the “**DIP Guarantors**”, the other Loan Parties party thereto from time to time (together with the DIP Borrowers and the DIP Guarantors, the “**DIP Loan Parties**”), the

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the DIP Loan Agreement.

lenders party thereto from time to time (the “**DIP Lenders**”) and Blue Torch Finance LLC, as administrative agent (in such capacity, and together with any successors and assigns thereto, the “**DIP Agent**” and together with the DIP Lenders, the “**DIP Secured Parties**”);

- B. approval of the terms of, and authorization for the Debtors to execute, enter into and deliver the DIP Documents, to perform all DIP Obligations (as defined below), to incur all obligations owing thereunder to the DIP Secured Parties, and to perform such other acts as may be reasonably necessary, desirable, or appropriate in connection with the DIP Documents;
- C. subject to the Carve Out and the Prepetition Intercreditor Agreement (as defined below), the granting of adequate protection to the Prepetition Agents (as defined below), on behalf of and for the benefit of the Prepetition Secured Lenders (as defined below), and the Prepetition Secured Lenders, in their capacity as the lenders under (i) that certain First Lien Financing Agreement, dated as of July 21, 2021, among the borrowers party thereto, the guarantors from time to time party thereto, the lenders from time to time party thereto (the “**Prepetition First Lien Lenders**”), and Blue Torch Finance LLC as administrative agent and collateral agent (the “**Prepetition First Lien Agent**”) (as amended by that certain Amendment No. 1 to First Lien Financing Agreement, dated as of July 20, 2022, that certain Amendment No. 2 to First Lien Financing Agreement, dated as of December 28, 2022, that certain Amendment No. 3 to First Lien Financing Agreement, dated as of March 31, 2023, and as further amended, restated, amended and restated, supplemented or otherwise modified through the Petition Date (as defined below), the “**Prepetition First Lien Financing Agreement**” and, together with all related loan documents, the “**Prepetition First Lien Loan Documents**” and the outstanding obligations under the Prepetition First Lien Financing Agreement, the “**Prepetition First Lien Obligations**”) and (ii) that certain Second Lien Financing Agreement, dated as of July 21, 2021, among the borrowers party thereto, the guarantors from time to time party thereto, the lenders from time to time party thereto (the “**Prepetition Second Lien Lenders**” and together with the Prepetition First Lien Lenders, the “**Prepetition Secured Lenders**”), and Prospect Capital Corporation, as administrative agent and collateral agent (the “**Prepetition Second Lien Agent**” and together with the Prepetition First Lien Agent, the “**Prepetition Agents**”, and the Prepetition Agents together with the Prepetition Secured Lenders, the “**Prepetition Secured Parties**”) (as amended by that certain Amendment No. 1 to Second Lien Financing Agreement, dated as of December 28, 2022, and as further amended, restated, amended and restated, supplemented or otherwise modified through the Petition Date, the “**Prepetition Second Lien Financing Agreement**” together with the Prepetition First Lien Financing Agreement, the “**Prepetition Financing Agreements**” and, the Prepetition Second Lien Financing Agreement together with all related loan documents, the “**Prepetition Second Lien Loan Documents**” and together with the Prepetition First Lien Loan Documents, the “**Prepetition Secured Loan Documents**” and, the outstanding obligations under the Prepetition Second Lien Financing Agreement, the “**Prepetition Second Lien Obligations**” and together with the Prepetition First Lien Obligations, the

“**Prepetition Secured Loan Obligations**” and the Debtor obligors on account of the Prepetition Secured Loan Obligations, the “**Prepetition Secured Obligors**”) for any diminution in value of their respective interests in the applicable Prepetition Collateral (as defined below), including as a result from the imposition of the automatic stay, the Debtors’ use, sale, or lease of the Prepetition Collateral, including Cash Collateral (as defined below) (“**Diminution in Value**”), subject to the restrictions set forth in the DIP Documents and this Interim Order;

- D. subject to the restrictions set forth in the DIP Documents and this Interim Order, authorization for the Debtors to use Cash Collateral and all other Prepetition Collateral in which the Prepetition Secured Lenders have an interest and, subject to the Carve Out and the Prepetition Intercreditor Agreement, the granting of adequate protection to the Prepetition Secured Lenders with respect to, *inter alia*, such use of Cash Collateral and the other Prepetition Collateral;
- E. subject to certain challenge rights of parties in interest set forth herein, approval of certain stipulations by the Debtors with respect to the Prepetition Secured Loan Documents and the liens and security interests arising therefrom;
- F. subject to the Carve Out, the granting of (i) superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, (ii) liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and, (iii) subject to the Prepetition Permitted Liens, priming liens pursuant to section 364(d)(1) of the Bankruptcy Code, in each case, as further described herein, on all DIP Collateral (as defined below) and all proceeds thereof (including any Avoidance Actions/Proceeds (as defined below), upon entry of a Final Order) to the DIP Agent, on behalf of and for the benefit of the DIP Lenders, and to the DIP Lenders, including, without limitation, all property constituting “Cash Collateral” as defined in section 363(a) of the Bankruptcy Code (including, without limitation, all cash and cash equivalents and other amounts from time to time on deposit or maintained by the Debtors in any deposit or securities account or accounts as of the Petition Date and any cash or cash equivalents received by the Debtors after the Petition Date as proceeds of the Prepetition Collateral) (collectively, “**Cash Collateral**”) and as more specifically defined below, which liens shall be subject to the priorities set forth below;
- G. subject to entry of the Final Order, the waiver of the Debtors’ right to surcharge the Prepetition Collateral and the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtors under the “equities of the case” exception in section 552(b) of the Bankruptcy Code;
- H. subject to entry of the Final Order, a finding that neither the DIP Lenders nor the Prepetition Secured Lenders, in their respective capacities as such, shall be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable;

- I. authorization and direction for the Debtors to make non-refundable, irrevocable, and final payments on account of the principal, interest, fees (including, the Closing Fee and Agent Fee, under and as defined in the DIP Loan Agreement), expenses and other amounts payable under the DIP Documents, each as applicable, as such become due and payable, all to the extent provided in, and in accordance with, this Interim Order, the Final Order (upon entry) and the applicable DIP Documents;
- J. authorization for the Debtors to use the proceeds of the DIP Facility and the Cash Collateral in accordance with the Approved Budget (as defined below), the DIP Documents, the Interim Order, and the Final Order (upon entry);
- K. modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order, the Final Order (upon entry) and the DIP Documents;
- L. set the date for the hearing (the “**Final Hearing**”) to be held no later than thirty(30) calendar days after the Petition Date to consider on a final basis the Motion and the entry of a final order (the “**Final Order**” and together with the Interim Order, the “**DIP Orders**”) authorizing and approving the transactions described in the foregoing clauses, which Final Order shall be in form and substance (including with respect to any subsequent modifications made in response to any objections or comments made by the Court) acceptable to the DIP Agent (acting at the direction of the Required DIP Lenders, under and as defined in the DIP Loan Agreement (the “**Required DIP Lenders**”)); and
- M. providing for the immediate effectiveness of this Interim Order and the Final Order (upon entry) and waiving any applicable stay (including under Bankruptcy Rule 6004) to permit such immediate effectiveness.

The Court (the “**Court**”) having reviewed the Motion, the exhibits attached thereto, the *Declaration of Chad Wallace, Chief Executive Officer of PGX Holdings, Inc., in Support of Chapter 11 Filing and First Day Motions* (the “**First Day Declaration**”), the *Declaration of Neil Augustine in support of Motion of Debtors Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the “**Augustine Declaration**”), and the evidence submitted at the hearing (the “**Interim Hearing**”); and adequate notice of the Motion and the Interim Hearing

having been given under the circumstances and in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and Local Rules 2002-1 and 4001-2 and no further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is fair and reasonable and in the best interests of the Debtors, their estates, their creditors and all parties in interest and is necessary to avoid immediate and irreparable harm to the Debtors and their estates and for the continued operation of certain of the Debtors' businesses and the preservation of value of the Debtors' assets pending the Final Hearing; and any objections to the entry of this Interim Order having been withdrawn or overruled on the merits; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor;

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. Debtor-in-Possession Operation. On June 4, 2023 (the "**Petition Date**"), the Debtors commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

B. Jurisdiction and Venue. This Court has jurisdiction over the Chapter 11 Cases, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334. The Court's consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C.

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitutes conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

§ 157(b)(2). Venue for the Chapter 11 Cases and proceeding on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Committee. As of the date hereof, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not yet appointed an official committee in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the “**Committee**”).

D. Notice. Proper, timely, adequate and sufficient notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing is or shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, for purposes of Bankruptcy Rule 6003.

E. Debtors’ Stipulations. Without prejudice to the rights of any other party in interest and subject to the limitations thereon contained in paragraph 15 below, the Debtors, on their behalf and on behalf of their estates, admit, acknowledge, agree, and stipulate to the following, which stipulations shall be binding on the Debtors, their estates, and all parties in interest (paragraphs E.i through E.vi below are referred to herein, collectively, as the “**Debtors’ Stipulations**”):

i. Prior to the Petition Date and pursuant to the Prepetition Financing Agreements, the Prepetition Secured Obligors were indebted and liable to the Prepetition Secured Lenders (a) with respect to the outstanding obligations under the Prepetition First Lien Financing Agreement, for term loans in the aggregate principal amount of \$243,447,030.58, which amounts are inclusive of the Emergency Bridge, and (b) with respect to the outstanding obligations under the Prepetition Second Lien Financing Agreement, for term loans in the aggregate principal

amount of \$179,986,411.00, plus, with respect to subsections (a)-(b) of this sentence, all accrued but unpaid interest (including interest paid in kind, accrued but unpaid interest payable in cash and interest at the default rate, each as applicable), fees, expenses, and disbursements (including attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), indemnification obligations, guarantee obligations, and all other Prepetition Secured Loan Obligations expressly provided for under the Prepetition Financing Agreements, or incurred in connection therewith, and the Debtors are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Prepetition Secured Loan Obligations.

ii. The Prepetition First Lien Agent and the Prepetition Second Lien Agent entered into that certain Intercreditor Agreement, dated as of July 21, 2021 (as amended by that certain Consent and Amendment No. 1 to Intercreditor Agreement, dated as of December 28, 2022, and as further amended, restated, amended and restated, supplemented or otherwise modified through the Petition Date, the "**Prepetition Intercreditor Agreement**"), which governs certain rights, interests, obligations, priorities and positions as between the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders with respect to the assets and properties of the Debtors and the Prepetition Secured Obligors.

iii. The Prepetition Secured Loan Obligations constitute legal, valid, binding and non-avoidable obligations of the Prepetition Secured Obligors, enforceable in accordance with the terms of the applicable Prepetition Secured Loan Documents and subject to the terms of the Prepetition Intercreditor Agreement. No offsets, recoupments, challenges, objections, defenses to, counterclaims to, or claims or causes of action that could reduce the amount or ranking of, the Prepetition Secured Loan Obligations exist. No portion of the Prepetition Secured Liens (as

defined below) or Prepetition Secured Loan Obligations (including any interest or fees owed thereunder) is subject to set-off, avoidance, impairment, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), counterclaims, recoupment, defenses, cross-claims or any other challenges under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity. The Prepetition Secured Loan Documents are valid and enforceable by the Prepetition Secured Lenders against each of the Prepetition Secured Obligors.

iv. To secure the Prepetition Secured Loan Obligations, the Prepetition Secured Obligors entered into various security and collateral documents pursuant to and in connection with the Prepetition Secured Loan Documents, pursuant to which the Prepetition Secured Lenders were granted the benefit of valid, binding, perfected, enforceable, liens and security interests in the Prepetition Collateral, which such liens and security interests are senior in right, priority, operation and effect to all other interests in the Prepetition Collateral, in all respects, notwithstanding any provisions of the Uniform Commercial Code or any other federal, state or foreign law (the “**Prepetition Secured Liens**”) (subject to the relative priorities among the Prepetition Secured Lenders under the Prepetition Intercreditor Agreement) and subject to the Prepetition Permitted Liens. The Prepetition Secured Liens provide the Prepetition Agents, for and on behalf of the Prepetition Secured Lenders, subject to the terms of the Prepetition Intercreditor Agreement, with valid, binding, properly perfected, enforceable, first-priority liens, and security interests in all property described in the Prepetition Secured Loan Documents, including, without limitation, Cash Collateral and the “Collateral” (as defined in the applicable Prepetition Secured Loan Documents) (collectively, the “**Prepetition Collateral**”), and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value. All cash of the

Debtors and cash proceeds of the Prepetition Collateral, including all such cash and cash proceeds of such Prepetition Collateral held at any time and from time to time in any of the Debtors' securities accounts and banking, checking, or other deposit accounts with financial institutions (in each case, other than trust, escrow, payroll, and custodial funds held as of the Petition Date in properly established trust, escrow, payroll, and custodial accounts), are and will be Cash Collateral of the Prepetition Secured Lenders.

v. The Prepetition Secured Liens (a) are valid, binding, properly perfected, enforceable and non-avoidable liens on and security interests in the Prepetition Collateral; (b) are not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, offset, counterclaim, defense, "claim" (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind by any person or entity; (c) subject to the preservation of rights provided in paragraph 15 of this Interim Order, entitle the Prepetition Agents (acting at the direction of the applicable Prepetition Secured Lenders) to credit bid the entirety of the Prepetition Secured Loan Obligations pursuant to section 363(k) of the Bankruptcy Code without further challenges from the Debtors or any other party and implemented by the Prepetition Secured Lenders in their absolute discretion; and (d) are subject and subordinate only to (1) the Carve Out (as defined below), (2) the DIP Liens (as defined below), (3) the Adequate Protection Liens (as defined below), and (4) valid and enforceable liens and encumbrances in the Prepetition Collateral (if any) that were expressly permitted to be senior to the Prepetition Secured Lenders' liens under the applicable Prepetition Secured Loan Documents, that are valid, properly perfected, enforceable, and non-avoidable as of the Petition Date or perfected following the Petition Date as permitted by section 546 of the Bankruptcy Code and that

are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (foreign or domestic) (collectively the “**Prepetition Permitted Liens**”), and the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Secured Loan Documents or the Debtors, and the Debtors irrevocably waive, discharge and release, for themselves and their estates, any right to challenge or contest, in any way, the scope, extent, perfection, priority, validity, non-avoidability, and enforceability of the Prepetition Secured Liens or the validity, enforceability, or priority of payment of the Prepetition Secured Loan Obligations and the Prepetition Secured Loan Documents. The Prepetition Secured Liens were granted to the Prepetition Secured Lenders for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of loans, commitments, and/or other financial accommodations under the Prepetition Secured Loan Documents. Pursuant to and as more particularly described in the Prepetition Secured Loan Documents, the Prepetition Secured Liens are valid, binding, properly perfected, enforceable, non-avoidable, first-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral), and are senior in right, priority, operation and effect to all other interests in the Prepetition Collateral, in all respects, notwithstanding any provisions of the Uniform Commercial Code or any other Federal, State or foreign law (subject to the relative priorities among the Prepetition Secured Lenders under the Prepetition Intercreditor Agreement) and subject to the Prepetition Permitted Liens. The

Prepetition Secured Loan Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

vi. Events of Default (under and as defined in each of the Prepetition Financing Agreements) have occurred and are continuing under the Prepetition Secured Loan Documents. The Prepetition Secured Lenders expressly reserve all of their respective rights, powers, privileges, and remedies under the Prepetition Secured Loan Documents with respect to such existing Events of Default.

vii. Subject to the Carve-Out, the liens and security interests granted to the DIP Lenders shall be valid, binding, properly perfected, enforceable and non-avoidable liens against the Debtors.

F. Release. Subject in all respects to paragraph 15 hereof, upon entry of this Interim Order, each of the Debtors and the Debtors' estates on its own behalf and on behalf of its past, present, and future predecessors, successors, heirs, subsidiaries and assigns or any person acting for and on behalf of, or claiming through them, hereby unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge the DIP Secured Parties (solely in their capacities as DIP Secured Parties) the Prepetition Secured Parties, and, in each case, each of their respective affiliates, former, current, or future officers, employees, directors, servants, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, heirs, predecessors in interest and each person acting for on behalf of any of them, each in their capacity as such (collectively, the "**Representatives**"), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries,

attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description in each case that exist on the date hereof and in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have with respect to, relating to or arising from the DIP Obligations, the DIP Liens (as defined below), the DIP Documents, the Prepetition Secured Loan Documents, the Prepetition Secured Loan Obligations or the Prepetition Secured Liens, as applicable, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses or recharacterization claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the DIP Secured Parties or the Prepetition Secured Parties and (iv) any and all claims and causes of action related to other carrying costs, penalties, legal, accounting and other professional costs, and consequential and punitive damages payable to third parties.

G. Prepetition Intercreditor Agreement. Pursuant to section 510 of the Bankruptcy Code, the Prepetition Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Secured Loan Documents or otherwise (i) shall remain in full force and effect, (ii) shall continue to govern the relative rights, priorities and remedies of the Prepetition Secured Lenders and (iii) shall not be deemed to be amended, altered or modified by the terms of this Interim Order, unless as expressly set forth herein.

H. Prepetition Permitted Liens. Nothing herein shall constitute a finding or ruling by this Court that any alleged Prepetition Permitted Lien is valid, senior, enforceable, prior, perfected,

or non-avoidable.<sup>4</sup> Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, or a Committee (if appointed), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Prepetition Permitted Lien, rather, any such alleged claim arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority vis-à-vis the Prepetition Secured Liens as such claims had on the Petition Date.

I. Cash Collateral. All of the Debtors' cash (subject to certain exceptions set out in the Prepetition Secured Loan Documents), including, without limitation, the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of Prepetition Collateral, constitutes "cash collateral" within the meaning of section 363(a) of the Bankruptcy Code and is DIP Collateral of the DIP Secured Parties and Prepetition Collateral of the Prepetition Secured Parties.

J. Stipulation Binding on Debtors. The Debtors' acknowledgments, stipulations, waivers, and releases shall be binding on the Debtors and their respective representatives, successors, and assigns, and on each of the Debtors' estates and all entities and persons, including any creditors of the Debtors, and each of their respective representatives, successors, and assigns, including, without limitation, any trustee or other representative appointed in these Chapter 11 Cases or Successor Cases (as defined below), whether such trustee or representative is appointed under chapter 11 or chapter 7 of the Bankruptcy Code.

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<sup>4</sup> For the avoidance of doubt, as used in this Interim Order, no reference to the Prepetition Permitted Liens shall refer to or include the Prepetition Secured Liens.

K. Findings Regarding the DIP Financing and Cash Collateral.

i. The Debtors have requested from each of the DIP Secured Parties, and the DIP Secured Parties are willing to provide financing to the Debtors subject to: (a) for the Interim New Money DIP Loans, entry of this Interim Order and, for the Final New Money DIP Loans, the Final Order; (b) Court approval of the terms and conditions of the DIP Facility and the DIP Documents; (c) satisfaction or waiver of the closing conditions set forth in the DIP Documents; and (d) findings by this Court that the DIP Facility is essential to the Debtors' estates, that the DIP Secured Parties are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Secured Parties' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

ii. The Debtors have an immediate and critical need to obtain the financing contemplated under the DIP Facility (the "**DIP Financing**") and to continue to use the Prepetition Collateral (including Cash Collateral). The Debtors' borrowings from the DIP Lenders under the DIP Facility will be used in a manner consistent with the terms and conditions of the applicable DIP Documents and this Interim Order for: (a) working capital and other general corporate purposes of the Debtors solely in accordance with the Approved Budget, subject to Permitted Variances (as defined below); (b) payment of amounts due under the DIP Facility, including interest and fees payable thereunder, including the Agent Fee and Closing Fee, and any Adequate Protection Payments (as defined below) payable pursuant to this Interim Order, in accordance with the Approved Budget, subject to Permitted Variances; (c) payment of the costs of administering the Chapter 11 Cases (including professional fees and expenses); (d) funding of a wind-down budget in form and substance acceptable to the Required DIP Lenders (such consent not to be

unreasonably withheld) in an amount not less than \$2,625,000, to be held in escrow by the DIP Agent and to be released only upon the closing of the Sale Transaction, which shall automatically be increased on a dollar for dollar basis to the extent, as of the date of the consummation of the Sale Transaction, the Loan Parties have capital in excess of the amount set forth in the then-Approved Budget; *provided, however*, such that in no event shall the wind-down budget exceed \$3,000,000; and (e) making any other payments consistent with the then-applicable Approved Budget, subject to Permitted Variances. Except with the prior written consent of the DIP Agent, at the direction of the Required DIP Lenders in their sole discretion, the Debtors shall not be permitted to use the proceeds of the DIP Facility and the proceeds of the Prepetition Collateral (including the Cash Collateral) in contravention of the provisions of the orders entered in the Chapter 11 Cases (including this Interim Order), including any restrictions or limitations on the use of proceeds contained therein. The Debtors' access to sufficient working capital through the use of Cash Collateral and other Prepetition Collateral and the incurrence of indebtedness under the DIP Facility are necessary and vital to the preservation and maintenance of the Debtors' estates, to preserve the Debtors' business as a going concern and to maximize value for all parties-in-interest. The Debtors' use of Cash Collateral alone would be insufficient to meet the Debtors' cash disbursement needs during the period of effectiveness of this Interim Order. The Debtors and their estates will suffer immediate and irreparable harm if immediate financing is not obtained and permission to use Cash Collateral is not granted. The terms of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. The adequate protection provided in this Interim Order and the other benefits and privileges contained herein are consistent with, and authorized by, the Bankruptcy Code.

iii. The DIP Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, capital structure, and the circumstances of these Chapter 11 Cases, the Debtors are unable to obtain financing on terms more favorable than that offered by the DIP Lenders under the DIP Documents and are unable to obtain adequate (a) unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or (b) secured credit allowable solely under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code. The DIP Lenders would not have been willing to provide the DIP Facility without, (x) granting to the DIP Secured Parties, the rights, remedies, privileges, benefits, and protections provided herein and in the DIP Documents, including the DIP Liens and the DIP Superpriority Claims (as defined below) on the terms and conditions set forth herein, or (y) granting to the Prepetition Secured Parties the rights, remedies, privileges, benefits, and protections provided herein, including the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this Interim Order and the DIP Documents.

iv. The priming of the Prepetition Secured Liens on the Prepetition Collateral under section 364(d)(1) of the Bankruptcy Code (as required under the DIP Facility) will enable the Debtors to continue operating their businesses on a postpetition basis, to preserve the Debtors' businesses as a going concern and to maximize value for the benefit of the Debtors' estates, creditors and other constituents. The Prepetition Secured Lenders have consented to the priming of the Prepetition Secured Liens, entry into the DIP Facility and the terms of this Interim Order, which consent would not have been provided absent the restructuring transactions contemplated by the terms of this Interim Order and the DIP Documents, including, without limitation, the

Adequate Protection Payments, Adequate Protection 507(b) Claim (as defined below) and Adequate Protection Liens set forth below.

v. As a condition to entry into the DIP Documents, the extension of credit under the DIP Facility, and the authorization to use Cash Collateral, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties require, and the Debtors have agreed, that (a) proceeds of the DIP Facility shall be used in a manner consistent with the terms and conditions of this Interim Order, the DIP Documents, and in accordance with the Approved Budget (as the same may be modified from time to time consistent with the terms of the DIP Documents and this Interim Order), subject to Permitted Variances and (b) as of, and commencing on the date of entry of this Interim Order, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Interim Order and the DIP Documents.

vi. The Roll-Up shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition First Lien Lenders in their capacity as DIP Lenders, to fund amounts and provide other consideration to the Debtors under the DIP Facility and not as payments under, adequate protection for, or otherwise on account of any of the Prepetition First Lien Secured Obligations. The Prepetition First Lien Lenders would not otherwise consent to the use of their Cash Collateral and the DIP Agent and the DIP Lenders would not be willing to provide the DIP Facility or extend credit to the Debtors thereunder, without the inclusion of (a) the Interim Roll-Up Amount, representing a roll-up of the Emergency Bridge, upon entry of the Interim Order, and (b) the Final Roll-Up Amount, upon entry of the Final Order. The Roll-Up of the Prepetition First Lien Secured Obligations in the Roll-Up Amount into DIP Obligations will enable the Debtors to obtain urgently needed financing to administer these Chapter 11 Cases to fund their operations and maximize value for all parties in interest.

vii. Based on the Motion, the First Day Declaration, the Augustine Declaration and the record presented to the Court at the Interim Hearing, the terms of the DIP Financing, the terms of the Adequate Protection Obligations, and the terms on which the Debtors may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order and the DIP Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

viii. The Prepetition Secured Lenders have consented to the use of Cash Collateral and the other Prepetition Collateral, the priming of the Prepetition Secured Liens pursuant to section 364(d)(1) of the Bankruptcy Code, the incurring by the Debtors of the DIP Obligations under the DIP Facility, and the Debtors' entry into the DIP Documents in accordance with and subject to the terms of this Interim Order and the DIP Documents. The Prepetition Secured Lenders are each entitled to receive adequate protection as set forth herein to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral.

ix. The DIP Financing, as well as the terms of the Adequate Protection Obligations, and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, and their respective advisors, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including: (a) the DIP Loans and (b) any "Obligations" (as defined in the DIP Loan Agreement) of the Debtors owing to the DIP Secured Parties or any of their affiliates, in accordance with the terms of the DIP Documents, including (x) the Interim Roll-Up Amount, representing a roll-up of the Emergency Bridge, upon entry of this Interim Order, and (y) the Final

Roll-Up Amount, upon entry of the Final Order, and any obligations, to the extent provided for in the DIP Documents, to indemnify the DIP Secured Parties and to pay any interest, fees (including the Agent Fee and Closing Fee), expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the DIP Documents), amounts, charges, costs, indemnities and other obligations that are chargeable or reimbursable under this Interim Order, the Final Order, or the DIP Documents (the foregoing in clauses (a) and (b) collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Lenders and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise. In providing the DIP Loans and consenting to the use of Cash Collateral, the DIP Lenders, the Prepetition Secured Lenders and their respective Representatives have acted in the best interests of the Debtors' estates, for the benefit of all stakeholders, to preserve and enhance the value of the Prepetition Collateral and maximize recoveries for stakeholders. The Prepetition Secured Lenders and the DIP Lenders have acted in good faith regarding the DIP Financing and the Debtors' continued use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the Prepetition Secured Lenders (and their Representatives) and the DIP Lenders (and their Representatives) shall be entitled to the full protection of section 363(m) of the

Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

x. Until the applicable Prepetition Secured Loan Obligations are Paid in Full<sup>5</sup>, the Prepetition Secured Lenders are entitled to the adequate protection as provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral; *provided, however*, nothing in this Interim Order or the other DIP Documents shall (a) be construed as the affirmative consent by the Prepetition Secured Lenders for the use of Cash Collateral, other than on the terms set forth in this Interim Order and in the context of the DIP Financing authorized by this Interim Order, (b) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior), or (c) prejudice, limit or otherwise impair the rights of the Prepetition Secured Lenders to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Lenders.

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<sup>5</sup> **"Paid in Full"** or **"Payment in Full"** means the indefeasible payment in full, in cash of all obligations (including, without limitation, principal, interest (payable in cash or in kind), premiums, fees, expenses and indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the applicable financing facility (including the Prepetition Financing Agreements and the DIP Facility), the cash collateralization or repayment in full in cash of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the applicable financing facility. No facility shall be deemed to have been Paid in Full until such time as, with respect to the applicable facility, (a) the commitments to lend thereunder have been terminated and (b) either the applicable Prepetition Agent or the DIP Agent, as applicable, has received (i) a countersigned payoff letter in form and substance satisfactory to such agent at the direction of the required lenders under the applicable financing facility and (ii) releases from the Debtors (including any liquidator acting on behalf of any of the Debtors or their estates, if applicable) in form and substance satisfactory to such agent at the direction of the required lenders under the applicable financing facility.

xi. The Debtors have prepared and delivered to the DIP Lenders, and the DIP Lenders have approved, a proposed budget (such initial budget, the “**Initial DIP Budget**”), a copy of which is attached hereto as **Exhibit B**, which, for the avoidance of doubt, shall constitute an “Approved Budget.” The Initial DIP Budget reflects the Debtors’ anticipated net cash flow and anticipated disbursements for each week during the period from the Petition Date through and including September 16, 2023. The Initial DIP Budget may be modified, amended and updated from time to time in accordance with the DIP Loan Agreement, and once approved by, and in form and substance satisfactory to, the DIP Agent (acting at the direction of the Required DIP Lenders, in their sole discretion), or deemed approved pursuant to the DIP Loan Agreement, shall supplement and replace the Initial DIP Budget (the Initial DIP Budget, following entry of this Interim Order, and each subsequently approved budget, shall each constitute without duplication, an “**Approved Budget**”). The Initial DIP Budget is reasonable under the facts and circumstances. The DIP Lenders are relying, in part, upon the Debtors’ agreement to comply with the Approved Budget, the other DIP Documents, and this Interim Order in determining to enter into the postpetition financing arrangements provided for in this Interim Order.

xii. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rules 4001-2(b). Absent granting the relief set forth in this Interim Order, the Debtors’ estates will be immediately and irreparably harmed. Among other things, the relief granted herein will minimize disruption of the Debtors’ business and permit the Debtors to meet payroll, continue operating their business in the ordinary course, run a marketing process consistent with the Debtors’ proposed Bid Procedures (as defined herein) and Milestones (as defined herein) and pay other expenses necessary to maximize the value of the Estates for all parties in interest. Consummation of the DIP Financing and the use of

Prepetition Collateral, including Cash Collateral, in accordance with this Interim Order and the DIP Documents are therefore in the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties.

L. Prepetition Secured Lenders' Good Faith. By virtue of the stipulations and findings in this Interim Order related to the Prepetition Secured Loan Obligations and the DIP Financing, and certain of the Prepetition Secured Lenders agreeing to provide the DIP Financing in their capacity as DIP Lenders, no "cause" has been shown to limit or otherwise impair the Prepetition Secured Lenders' right to credit bid the Prepetition Secured Loan Obligations pursuant to section 363(k) of the Bankruptcy Code.

M. Sections 506(c) and 552(b). In light of, among other things, (i) the DIP Agent's and the DIP Lenders' agreement that their liens and super-priority claims shall be subject to the Carve Out and (ii) the Prepetition Secured Lenders' agreement to subordinate the Prepetition Secured Liens and Prepetition Secured Loan Obligations to the DIP Liens, and to permit the use of the DIP Facility and Cash Collateral for payments made in accordance with the terms of this Interim Order and the other DIP Documents, including the Approved Budget (subject to Permitted Variances), the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Secured Lenders have negotiated for and the Debtors and the DIP Secured Parties and the Prepetition Secured Parties will seek in the Final Order a waiver of (x) the provisions of Bankruptcy Code section 506(c) for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Agent, the DIP Lenders, the Prepetition Agents and the Prepetition Secured Lenders, upon the DIP Collateral or the Prepetition Collateral, (y) any "equities of the case" claims under Bankruptcy Code section 552(b) with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or DIP Collateral, and (z) the

equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. Interim DIP Financing Approved. The Motion is granted, entry into the DIP Facility and the DIP Documents is authorized and approved, and the use of Cash Collateral is authorized, in each case, on an interim basis and subject to the terms and conditions set forth in this Interim Order, the DIP Documents, and the Approved Budget. Unless terminated earlier pursuant to the DIP Documents and this Interim Order, the DIP Facility will terminate on a date that is thirty (30) calendar days after the Petition Date, subject to availability of the Court (the “**Termination Date**”) absent the Court’s entry of a Final Order in form and substance satisfactory to the DIP Agent at the direction of the Required DIP Lenders.

2. Objections Overruled. Any objections, reservations of rights, or other statements with respect to entry of this Interim Order, to the extent not withdrawn, waived, settled or resolved, are overruled on the merits. This Interim Order shall become effective immediately upon its entry, notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062 and 9014.

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

(a) The Debtors are hereby authorized and empowered to (a) execute, enter into, deliver, and perform the DIP Documents, (b) incur and perform all obligations under the DIP Documents and this Interim Order and (c) execute, enter into, deliver and perform under all instruments, certificates, agreements, and documents that may be required or necessary for the Debtors’ performance under the DIP Documents and the creation and perfection of the DIP Liens

described in, and provided for by, this Interim Order and the DIP Documents. To the extent not entered into as of the date hereof, the Debtors and the DIP Secured Parties shall negotiate the DIP Documents in good faith, and in all respects such DIP Documents shall be, subject to the terms of this Interim Order and the Final Order, consistent with the terms of the DIP Loan Agreement and otherwise reasonably acceptable to the DIP Agent (acting at the direction of the Required DIP Lenders) and the Required DIP Lenders. Upon entry of this Interim Order, the Interim Order, the DIP Loan Agreement, and other DIP Documents shall govern and control the DIP Facility. The DIP Agent is hereby authorized to execute and enter into its respective obligations under the DIP Documents, subject to the terms and conditions set forth therein and this Interim Order. To the extent there exists any conflict among the terms and conditions of the DIP Documents and this Interim Order, the terms and conditions of this Interim Order shall govern and control.

(b) Upon entry of this Interim Order, to prevent immediate and irreparable harm to the Debtors' estates, the DIP Borrowers are hereby authorized to borrow, and the DIP Guarantors are hereby authorized to guarantee, the New Money DIP Loans pursuant to the DIP Loan Agreement in an aggregate principal or face amount not to exceed \$12,000,000.00 under the DIP Facility, which will be made available to the DIP Borrowers on or after the date of this Interim Order, subject to, and in accordance with, this Interim Order and which DIP Loans shall be used for all purposes permitted under the DIP Documents (and subject to the terms and conditions set forth herein and therein) and in accordance with the Approved Budget, subject to Permitted Variances.

(c) The Debtors are hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, fees, expenses and other amounts described in the DIP Documents and all other documents comprising the DIP Facility as such become due, including, without limitation, any fees due and payable thereunder, the DIP Agent's fees, and the reasonable

and documented fees and disbursements of the DIP Secured Parties' attorneys, advisors, accountants and other consultants, whether or not such fees arose before, on or after the Petition Date, whether or not the transactions contemplated hereby are consummated, and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order or the DIP Documents, as applicable; *provided, however*, that, other than in connection with the fees and expenses incurred and payable at the closing of the DIP Facility, including, without limitation, fees and expenses incurred before the Petition Date, the payment of the fees and expenses of the Professional Persons (as defined below) shall be subject to the provisions of paragraph 16 of this Interim Order. All collections, consideration and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Interim Order and the DIP Documents.

(d) Each officer and director of the Debtors acting individually is hereby authorized to execute and deliver each of the DIP Documents, such execution and delivery to be conclusive evidence of such individual's respective authority to act in the name of and on behalf of the Debtors.

(e) In furtherance of the foregoing subsections (a)-(d), and without further approval of this Court, the Debtors are hereby authorized and empowered to perform all such acts and execute and deliver all such documents and instruments, which for the avoidance of doubt shall include:

- (i) Amendments. The execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the Debtors and the DIP Agent (acting at the direction of the Required DIP Lenders) may agree, it being understood that no further approval of the Court shall be required for authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents that (A) do not (i) shorten the maturity of the extensions of credit thereunder, (ii) increase the principal amount of, the rate of interest on, or the fees payable in connection with the DIP Facility, or (iii) change any event of default, add any covenants, or amend the covenants to be materially more restrictive or (B) are (i) immaterial or non-adverse to the Debtors and (ii) in accordance with the DIP Documents;

*provided, however,* that no waiver, modification or amendment of any of the provisions of the DIP Documents shall be effective unless set forth in writing, signed by or on behalf of all the Debtors and the DIP Agent (after having obtained the approval of the Required DIP Lenders or the DIP Lenders (as applicable)) and, to the extent required herein, approved by this Court;

- (ii) Repayment. The incurrence of, and the non-refundable payment to the DIP Lenders, of any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Loan Agreement and this Interim Order, and the costs and expenses as may be due from time to time, including fees and expenses of the Lender Professionals (as defined below), in each case, as provided for in the DIP Documents, shall be without the need to file retention or fee applications or to provide notice to any party, other than as provided in paragraph 16 hereof; and
- (iii) Performance. The performance of all other acts required under or in connection with the DIP Documents, including the granting of the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and Adequate Protection 507(b) Claim and perfection of the DIP Liens and Adequate Protection Liens as permitted herein and therein.

(f) The DIP Guarantors are hereby authorized and directed to jointly, severally, and unconditionally guarantee, and upon entry of this Interim Order shall be deemed to have guaranteed, in full, all of the DIP Obligations of the DIP Borrowers.

(g) Upon execution and delivery of the DIP Documents and subject to the Carve-Out, the DIP Documents, the DIP Obligations, and the DIP Liens shall constitute valid, binding and unavoidable obligations of the Debtors, enforceable against the Debtors, their estates and any successors thereto, including, without limitation, any trustee appointed in the Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing, in accordance with the terms of the DIP Documents and this Interim Order (collectively, the “**Successor Cases**”). Upon entry of this Interim Order, the DIP Obligations shall include all loans and any other indebtedness or obligations, contingent or absolute, which may now, or from time to time, be

owing by any of the DIP Borrowers or DIP Guarantors to the DIP Agent or any of the DIP Lenders, including, without limitation, all principal, accrued interest, costs, charges, fees (including the Agent Fee and Closing Fee), expenses, obligations in respect of indemnity claims (contingent or otherwise) and other amounts under the DIP Documents, without the need to obtain further Court approval (except as otherwise provided herein or in the DIP Documents). No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order to the DIP Secured Parties (as to the DIP Agent, for the benefit of the DIP Lenders) shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including under sections 502(d), 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or other similar state statute or common law), or subject to any defense, reduction, setoff, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim or counterclaim. The DIP Obligations shall be due and payable, without notice or demand, in accordance with this Interim Order and the DIP Documents and the use of Cash Collateral shall automatically cease on the Termination Date, except as provided in paragraph 12 hereof.

(h) The DIP Agent and DIP Lenders shall have no obligation to make any loan or advance under the DIP Documents unless all of the conditions precedent to the making of such extension of credit, amendment or renewal under the DIP Documents and this Interim Order have been satisfied in full or waived by the DIP Agent (acting at the direction of the Required DIP Lenders) in accordance with the terms of the DIP Loan Agreement.

(i) From and after the Petition Date, the Debtors shall use proceeds of the DIP Loans only for the purposes specifically set forth in this Interim Order, the Final Order (upon entry) and the DIP Documents, and in compliance with the Approved Budget, subject to Permitted Variances,

and the terms and conditions in this Interim Order, the Final Order (upon entry) and the DIP Documents.

(j) No DIP Lender or DIP Agent shall have any obligation or responsibility to monitor any DIP Loan Party's use of the DIP Facility and each DIP Lender and the DIP Agent may rely upon each DIP Loan Party's representation that the use of the DIP Facility at any time is in accordance with the requirements of this Interim Order and the DIP Documents.

(k) The Initial DIP Budget is approved in its entirety. The use of proceeds from the DIP Facility and the use of Cash Collateral under this Interim Order shall be in accordance with the Approved Budget, subject to Permitted Variances and the terms and conditions set forth in the DIP Documents and this Interim Order. The Debtors shall deliver to the DIP Agent (along with its professionals), for the benefit of the DIP Lenders, (a) by not later than 5:00 p.m. (Mountain Time) beginning on the Thursday following a full calendar week after the Petition Date and by not later than 5:00 p.m. (Mountain Time) each second and fourth Thursday thereafter, an updated budget, in form and substance satisfactory to the DIP Agent (acting at the direction of the Required DIP Lenders) for the subsequent 13 week period consistent with the budget, and such updated budget shall become the Approved Budget for the purposes of the DIP Facility upon the DIP Agent's approval (at the direction of the Required DIP Lenders) that the proposed updated Budget is substantially in the form of the Budget and in form and substance satisfactory to the DIP Agent at the direction of the Required DIP Lenders; *provided*, that, until a new Approved Budget has been so approved, the most recent Approved Budget shall govern, and (b) beginning on the Thursday following a full calendar week after the Petition Date (by not later than 5:00 p.m. Mountain Time) and on every Thursday thereafter (by not later than 5:00 p.m. Mountain Time) (x) a variance report (the "**Variance Report**") setting forth actual cash receipts and disbursements

and cash flows of the Debtors for the prior Testing Period (as defined below) and setting forth all disbursement variances, on a line-item and aggregate basis, from the amount set forth for such period as compared to the applicable Approved Budget, in each case, for the applicable Testing Period (and each such Variance Report shall include explanations for all material variances and shall be certified by the Chief Financial Officer of the Debtors), and (b) an updated “key performance indicators” slide deck prepared by the DIP Borrower in form and substance consistent with the deck delivered to the DIP Agent on May 31, 2023 and to the DIP Lenders prior to the Effective Date).

(l) For purposes hereof, the term “**Permitted Variances**” shall mean, for (a) the period commencing on the Petition Date through and including the two week period ending on the second Friday following the Petition Date and (b) each Friday thereafter (each week commencing on the Friday of such week), but calculated on a rolling four (4) week basis to account for timing of payment variances, unless otherwise agreed by the DIP Agent (the “**Testing Period**”) (i) any favorable disbursement variance, and (ii) any unfavorable disbursement variance (other than disbursements for professional fees) of no more than (a) 12.5% for actual aggregate disbursements as compared to the budgeted disbursements and (b) 12.5% for actual receipts as compared to budgeted receipts set forth in the Approved Budget with respect to the applicable Testing Period; *provided*, that notwithstanding the foregoing, professional fees, the Carve-Out, and any bonus payments to executive officers of the Debtors and their subsidiaries shall be excluded from the determination of Permitted Variances. The Permitted Variances with respect to each Testing Period shall be determined and reported to the DIP Agent and the DIP Lenders not later than 5:00 p.m. (Mountain Time) on each Thursday immediately following the first full calendar week after the Petition Date and at the end of each such Testing Period. Additional variances, if any, from

the prior Approved Budget, and any proposed changes to the budget, shall be subject to the approval of the DIP Agent (acting at the direction of the Required DIP Lenders).

4. DIP Superpriority Claims. Upon entry of this Interim Order, subject only to the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims of the DIP Secured Parties against each of the Debtors in each of these Chapter 11 Cases and any Successor Cases (without the need to file any proof of claim) with priority over any and all claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims, priority and other unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, including, without limitation, administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 or 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the “**DIP Superpriority Claims**”) shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Debtors and all proceeds thereof (including, subject to entry of a Final Order, the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code and the proceeds thereof (collectively, the “**Avoidance Actions/Proceeds**”). The DIP Superpriority Claims shall be entitled to the full protection of

section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

5. DIP Liens. As security for the DIP Obligations, effective and perfected immediately upon entry of this Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good, or the possession or control by the DIP Agent or DIP Lenders of, or over, any DIP Collateral, the following continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition first priority security interests and liens are hereby granted to the DIP Agent, for the benefit of the DIP Lenders (all presently owned and hereafter acquired property identified in clauses (a), (b) and (c) below being collectively referred to as the “**DIP Collateral**”, and all such liens and security interests granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents identified in clauses (a), (b) and (c), the “**DIP Liens**”):

(a) First Lien on Unencumbered Property. Subject only to the Carve Out, pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to a valid, perfected and non-avoidable lien (collectively, “**Unencumbered Property**”), including any and all unencumbered cash of the Debtors and any investment of such cash, cash equivalents, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel

paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits, in each case, with respect to any and all of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, including, subject to entry of a Final Order, the Avoidance Actions/Proceeds;

(b) Priming Liens on Prepetition Collateral. Subject only to the Carve Out and any Prepetition Permitted Liens, pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in, and lien upon, all pre- and postpetition property of the Debtors (including any and all cash, cash equivalents and Cash Collateral and any investment of such cash, cash equivalents and Cash Collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including post-petition intercompany claims against any Debtor), contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits of any and all of the foregoing), whether now existing or hereafter acquired, that is subject to the Prepetition Secured Liens, which lien shall be senior in all respects to such Prepetition Secured Liens. Such security interests and liens shall be senior in all respects to and prime the interests in such property of the Prepetition Secured Lenders arising from current and future liens of the Prepetition Secured Lenders (including the Adequate Protection Liens granted hereunder);

(c) DIP Liens Junior to Certain Other Liens. Subject only to the Carve Out, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-

perfected junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors that is subject to Prepetition Permitted Liens on the Petition Date or subject to a Prepetition Permitted Lien in existence on the Petition Date that is perfected subsequent thereto solely as permitted by section 546(b) of the Bankruptcy Code; and

(d) DIP Liens Senior to Certain Other Liens. Except for the Carve Out and as otherwise provided in this paragraph 5, the DIP Liens shall not be (i) subject or subordinate to (a) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (b) unless otherwise provided for in the DIP Documents or in this Interim Order, any liens or security interests arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, (c) any intercompany or affiliate liens of the Debtors, or (d) any orders of attachment or judicial liens; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code heretofore or hereinafter granted in these Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The DIP Liens shall not be subject to sections 510, 549 or 550 of the Bankruptcy Code.

6. DIP Roll-Up Amounts. (a) Subject to entry of the Interim Order and only to paragraph 15 hereof, the Prepetition First Lien Secured Obligations in an aggregate amount of the Interim Roll-Up Amount and (b) subject to entry of the Final Order and only to paragraph 15 hereof, the Prepetition First Lien Secured Obligations in an aggregate amount of the Final Roll-Up Amount shall each respectively be automatically deemed funded pursuant to the DIP Loan

Agreement on a cashless basis and shall constitute DIP Obligations (as defined below), without any further action by the Debtors or any other party, and shall satisfy and discharge an equal amount of Prepetition First Lien Secured Obligations as if a payment in such amount had been made under the Prepetition First Lien Loan Documents on such date, as applicable. The Roll-Up Amount shall be deemed to be made by each DIP Lender (the “**Roll-Up Lenders**”) in an amount equal to such DIP Lender’s pro rata share of the aggregate amount of the Prepetition First Lien Secured Obligations owing to all Roll-Up Lenders and the outstanding aggregate amount of the Prepetition First Lien Secured Obligations held by any such Roll-Up Lender shall be automatically and irrevocably deemed reduced by (i) upon entry of the Interim Order, the amount of the Interim Roll-Up Amount, and (ii) upon entry of the Final Order, the amount of the Final Roll-Up Amount.

7. [Reserved].

8. Use of Cash Collateral. The Debtors are hereby authorized, subject to the terms and conditions of this Interim Order, the DIP Facility and the other DIP Documents and in accordance with the Approved Budget, subject to Permitted Variances, to use all Cash Collateral of the Prepetition Secured Parties, in consideration of which the Prepetition Secured Lenders are granted adequate protection as hereinafter set forth; *provided* that, except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court.

9. Adequate Protection of Prepetition Secured Lenders. Subject to the Carve Out, the Prepetition Secured Lenders are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, to adequate protection of their interests in all Prepetition Collateral, including Cash Collateral, solely to the extent of and in an amount equal to the aggregate Diminution in Value, if any, of the

Prepetition Secured Lenders' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, resulting from the Debtors' use, sale, or lease of the Prepetition Collateral (including Cash Collateral), the priming of the Prepetition Secured Lenders' security interests and liens on the Prepetition Collateral (including Cash Collateral) by the DIP Lenders pursuant to the DIP Documents and this Interim Order, the Carve Out, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the "**Adequate Protection Claim**"). On account of such Adequate Protection Claim, the Prepetition Secured Lenders, as applicable, shall receive the following (collectively, the "**Adequate Protection Obligations**"):

(a) Adequate Protection Liens. The Prepetition Secured Lenders are hereby granted (effective and perfected and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Adequate Protection Claim, a valid, binding, enforceable, non-avoidable and automatically and properly perfected replacement security interest in and lien upon all of the DIP Collateral, including replacement security interests in and liens upon all Unencumbered Property upon the date of this Interim Order and, upon entry of a Final Order, including the Avoidance Actions/Proceeds, in each case subject and subordinate only to (i) the DIP Liens and any liens to which the DIP Liens are junior, including the Prepetition Permitted Liens, if any, (ii) the Carve Out, and (iii) the Prepetition Intercreditor Agreement (the "**Adequate Protection Liens**"). Except as provided herein, the Adequate Protection Liens shall not be made subject to, or *pari passu* with, any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 510(c), 549 or

550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Adequate Protection Liens.

(b) Adequate Protection Section 507(b) Claim. The Prepetition Secured Lenders are hereby granted, subject to the DIP Superpriority Claims and the Carve Out, an allowed superpriority administrative expense claim in each of the Chapter 11 Cases and any Successor Cases as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claim with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (other than the DIP Superpriority Claims) (the “**Adequate Protection 507(b) Claim**”), which Adequate Protection 507(b) Claim shall have recourse to and be payable from all of the DIP Collateral in accordance with the priorities set forth herein, including, upon entry of a Final Order, the Avoidance Actions/Proceeds. Except to the extent expressly set forth in this Interim Order or the DIP Documents, the Prepetition Secured Lenders shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims, including claims that benefit from the Carve Out, have been indefeasibly paid in full and all DIP Commitments have been terminated.

(c) Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of paragraph 16 of this Interim Order, and subject to the Carve Out and the Prepetition Intercreditor Agreement, (i) all reasonable and documented out-of-pocket fees and expenses of the Prepetition Agents and the Prepetition Secured

Lenders (the “**Adequate Protection Fees**”), whether incurred before or after the Petition Date, limited, in the case of counsel, to all reasonable and documented out-of-pocket fees and expenses of (a) (i) King & Spalding, LLP, as counsel to the DIP Agent, the Prepetition First Lien Agent, and the Prepetition First Lien Lenders, (ii) Morris, Nichols, Arsht & Tunnell LLP, as local counsel to the DIP Agent, the Prepetition First Lien Agent, and the Prepetition First Lien Lenders, and (iii) Clyde & Co US LLP, as special counsel to the DIP Agent, the Prepetition First Lien Agent, and the Prepetition First Lien Lenders and (b) (i) Proskauer Rose LLP, as counsel to the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders and (ii) Morris, Nichols, Arsht & Tunnell LLP, as local counsel to the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders (such counsel listed (a)-(b), collectively, the “**Secured Parties Counsel**”); *provided*, that, immediately upon entry of this Interim Order, the Debtors are authorized and directed to pay all such Adequate Protection Fees incurred prior to and through the Petition Date that remain outstanding upon entry of this Interim Order to the Prepetition Agents and/or the Prepetition Secured Lenders, as applicable (the **Adequate Protection Payments**). None of the Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court’s approval of any such payments.

(d) Adequate Protection Reservation. Subject to the Prepetition Intercreditor Agreement, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Lenders is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. The receipt by the Prepetition Secured Lenders of the adequate protection provided for herein shall not be deemed an

admission that the interests of the Prepetition Secured Lenders are adequately protected. Further, this Interim Order shall not prejudice or limit the rights of the Prepetition Secured Lenders to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection in a manner consistent with the Prepetition Secured Loan Documents.

10. Application of Proceeds of Collateral. As a condition to entry into the DIP Loan Agreement, the extension of funds under the DIP Facility and authorization to use Cash Collateral, the Debtors, the DIP Lenders, and the Prepetition Secured Lenders, in their respective capacities, have agreed that as of and commencing on the date of entry of this Interim Order (and the date of entry of the Final Order, if entered), and to the extent set forth herein and therein, the Debtors shall apply the proceeds of DIP Collateral and Prepetition Collateral solely in accordance with this Interim Order (and the Final Order, if entered), the DIP Documents, the Prepetition Secured Loan Documents, and the Approved Budget. The DIP Obligations shall be repaid to the DIP Agent from the proceeds of DIP Collateral on a pro rata basis based on the then outstanding DIP Obligations, and the DIP Agent shall then promptly remit to the Prepetition First Lien Agent for disbursement any amounts in excess of the Payment in Full of the then outstanding DIP Obligations in accordance with the terms of the Prepetition Intercreditor Agreement (including, without limitation, the priorities set forth thereunder).

11. Milestones. As a condition to the use of the DIP Facility and Cash Collateral, and as further adequate protection to the Prepetition Secured Lenders, the DIP Lenders and Prepetition Secured Lenders are hereby entitled to performance of the following milestones by the dates set forth below (or such later date as may be agreed by the DIP Agent (acting at the direction of the Required DIP Lenders)) (the “**Milestones**”), and for the avoidance of doubt, unless waived by the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Agents (at the

direction of Required Lenders under, and as defined in, the applicable Prepetition Financing Agreement) in accordance with the terms of the DIP Documents, the failure of the Debtors to comply with any of the Milestones shall constitute an immediate Event of Default under the DIP Loan Agreement and this Interim Order and permit the DIP Agent (at the direction of the Required DIP Lenders) to exercise their respective rights and remedies as and to the extent provided for in this Interim Order and the DIP Documents:

a. No later than two (2) business days after the Petition Date, the Debtors shall file an appropriate motion with the Court for the sale of any of the Debtors' assets pursuant to section 363 of the Bankruptcy Code (the "**Sale Motion**"), and the bid procedures (the "**Bid Procedures**") that establishes a date that is no later than sixty (60) calendar days after the Petition Date as the deadline for the submission of binding bids with respect to their assets;

b. No later than four (4) business days after the Petition Date, the Court shall have entered this Interim Order;

c. No later than twenty-five (25) calendar days after the Petition Date, the Court shall have entered the Final Order, subject to the availability of the Court to conduct a Final Hearing on the DIP Facility;

d. No later than thirty (30) calendar days after the Petition Date, the Court shall have entered an order approving the Bid Procedures (the "**Bid Procedures Order**"), which order shall be in form and substance acceptable to the DIP Agent at the direction of the Required DIP Lenders;

e. No later than sixty-five (65) calendar days after the Petition Date, the Debtors shall commence an auction for the Acquired Assets, in accordance with the Bid Procedures Order; *provided* that if there is no higher or better offer submitted in comparison to the stalking horse bid(s), no auction shall be held;

f. No later than seventy (70) calendar days after the Petition Date, the Court shall have entered one or more sale order(s) (which shall be in form and substance acceptable to the Required DIP Lenders) approving each of the winning bid(s) resulting from such sale(s); and

g. Consummation of the sale and transactions contemplated thereby shall occur no later than the date that is one hundred and five (105) calendar days after the Petition Date.

12. Events of Default. With respect to (a) the DIP Lenders and the DIP Facility or (b) the Prepetition Secured Lenders and the Debtors' use of Cash Collateral, for purposes of this Interim Order, an "**Event of Default**" means an "Event of Default" as defined in the DIP Loan Agreement and as expressly provided for in this Interim Order. Notwithstanding anything in this Interim Order, following an Event of Default, the Prepetition Secured Lenders shall be stayed from enforcing any rights and remedies under this Interim Order unless and until the DIP Agent has delivered a Carve Out Trigger Notice (as defined below) and has complied with its obligations in connection with the issuance thereof or consents to such enforcement.

13. Remedies Upon Event of Default. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to the extent necessary to permit the DIP Secured Parties to enforce all of their respective rights under the DIP Documents and, upon the occurrence and during the continuance of an Event of Default under their respective DIP Documents and the giving of five (5) Business Days' prior written notice (the "**Remedies Notice Period**") (which shall run concurrently with any notice required to be provided under the DIP Documents), which may be via email, to counsel to the Debtors, counsel to the Committee (if any), and the U.S. Trustee, all rights and remedies provided for in the DIP Documents, including without limitation, to (i) immediately terminate consent to the Debtors' continued use of Cash Collateral and/or the DIP Facility, (ii) cease making any New Money DIP Loans under the DIP Facility to the Debtors, (iii) declare all DIP Obligations to be immediately due and payable, (iv) freeze monies or balances in the Debtors' accounts (and, with respect to the DIP Loan Agreement and the DIP Facility, sweep all funds contained in the Controlled Accounts, under and as defined in the DIP Loan Agreement), (v) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Agent or the DIP Lenders against the DIP Obligations, or otherwise enforce any and all rights

against the DIP Collateral in the possession of any of the applicable DIP Lenders, including, without limitation, disposition of the DIP Collateral solely for application towards the DIP Obligations, (vi) take any other actions or exercise any other rights or remedies permitted under the Interim Order and the Final Order, the DIP Documents or applicable law to effect the repayment of the DIP Obligations and (vii) exercise, subject to the rights of the Prepetition Secured Parties, all other rights and remedies provided for in the DIP Documents and under applicable law. The Debtors shall cooperate fully with the DIP Agent and the DIP Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise. Notwithstanding anything in this Interim Order, during the Remedies Notice Period, the Debtors shall be entitled to continue to use Cash Collateral in accordance with the terms of this Interim Order only to make payroll and fund critical expenses necessary to preserve the Prepetition Collateral, in each case in accordance with the terms of the Approved Budget and this Interim Order, or otherwise with the express written consent of the DIP Lenders and the Prepetition Secured Lenders in their respective capacities. For the avoidance of doubt, interest, including, where applicable, default interest, shall accrue and be paid as and to the extent set forth in the DIP Documents upon the occurrence and during the continuation of an Event of Default. For clarity, notwithstanding anything to the contrary in this Interim Order, prior to the DIP Lenders' enforcement of remedies, the Debtors shall have the right within the Remedies Notice Period to challenge the existence or occurrence of an Event of Default (and no other matters) by seeking emergency relief from the Court. If the Court finds that an Event of Default has occurred and is continuing, the DIP Lenders' right to enforce the remedies provided in the Interim Order and in the DIP Documents is subject to the DIP Lenders satisfying their obligations occasioned by the issuance of a Carve Out Trigger Notice as provided at paragraph 18 below. No rights, protections or remedies of the DIP Secured Parties

and the Prepetition Secured Parties granted by the provisions of this Interim Order, the DIP Documents, or the Prepetition Secured Loan Documents shall be limited, modified or impaired in any way by: (a) any actual or purported withdrawal of the consent of any party to the Debtors' authority to continue to use Cash Collateral; (b) any actual or purported termination of the Debtors' authority to continue to use Cash Collateral; or (c) except as provided herein or in the Final Order, the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

14. No Marshaling. Subject to and upon entry of the Final Order, neither the DIP Lenders nor the Prepetition Secured Lenders shall be subject to (a) the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or Prepetition Collateral, as applicable, or (b) the "equities of the case" exception in section 552(b) of the Bankruptcy Code.

15. Effect of Stipulations on Third Parties. Subject to the Challenge Period (as defined herein), the stipulations, admissions, releases, and agreements contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors and any successor thereto (including any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors) in all circumstances and for all purposes. The stipulations, admissions, releases, and agreements contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any Successor Cases (including the Committee, if any) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors, in all circumstances and for all purposes unless, and only to the extent that: (a) such committee, or any other party in interest, with requisite standing (subject in all respects to any agreement or applicable law that may limit

or affect such entity's right or ability to do so), has timely filed an adversary proceeding or contested matter under the Bankruptcy Rules (subject to the limitations contained herein, including, among others, in this paragraph 15) by the earlier of (i) (x) with respect to parties in interest with requisite standing other than the Committee (if any), seventy-five (75) calendar days after entry of this Interim Order and (y) with respect to the Committee, sixty (60) calendar days after the appointment of the Committee, if any and (ii) the Bid Deadline (under and as defined in the Bid Procedures) (the time period established by the foregoing clauses (i) and (ii), the "**Challenge Period**"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of any of the Prepetition Secured Loan Obligations or the Prepetition Secured Liens, or (B) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Challenges**") against either the Prepetition Secured Lenders or their respective Representatives in connection with matters related to the Prepetition Secured Loan Documents, the Prepetition Secured Loan Obligations, the Prepetition Secured Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; *provided, however*, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such Challenge or claim and any Challenges or claims not so specified before the expiration of the Challenge Period shall be deemed forever, waived, released and barred; *provided, further*, that the timely filing of a motion seeking standing to file a Challenge before the expiration of the Challenge Period, which attaches a draft complaint setting forth the legal and factual bases of the proposed Challenge, shall toll the Challenge Period only as to the party that timely filed such standing motion until such motion is resolved or adjudicated by

the Court. The Challenge Period may only be extended with the prior written consent of the Prepetition Agents (acting at the direction of the Required DIP Lenders or Required Lenders, as applicable), or pursuant to an order of the Court. If (a) no such Challenge is timely and properly filed during the Challenge Period, or (b) the Court does not rule in favor of the plaintiff in any such proceeding then, upon the expiration of such applicable Challenge Period, for all purposes in these Chapter 11 Cases and any Successor Cases (and after the dismissal of these Chapter 11 Cases or any Successor Cases): (i) the stipulations, admissions, releases, and agreements contained in this Interim Order, including the Debtors' Stipulations, shall be binding on all parties in interest, including the Committee (if any); (ii) the obligations of the Debtors under the Prepetition Secured Loan Documents, including the Prepetition Secured Loan Obligations, shall constitute allowed claims (without the need to file a proof of claim) not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter 11 Cases and any Successor Cases; (iii) the Prepetition Secured Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, properly perfected, security interests and liens on the Prepetition Collateral, not subject to recharacterization, subordination, avoidance or other defense; and (iv) the Prepetition Secured Loan Obligations and the Prepetition Secured Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by the Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases or any Successor Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including any successor thereto (including any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for the Debtor) and any defenses, claims, causes of action, counterclaims and offsets by the Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases or any Successor Cases, or any other

party acting or seeking to act on behalf of the Debtors' estates, including any successor thereto (including any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for the Debtor), whether arising under the Bankruptcy Code or otherwise, against the Prepetition Secured Lenders and their Representatives arising out of or relating to any of the Prepetition Secured Loan Documents shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, releases, and agreements contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any statutory or nonstatutory committee appointed or formed in the Chapter 11 Cases or any Successor Cases, including the Committee (if any), and on any other person or entity, except to the extent that such stipulations, admissions, releases, and agreements were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction (and solely as to the plaintiff party that timely filed such Challenge and not, for the avoidance of doubt, any other party-in-interest). Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee (if any) or any non-statutory committees appointed or formed in the Chapter 11 Cases or any Successor Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including Challenges with respect to the Prepetition Secured Loan Documents, the Prepetition Secured Loan Obligations, or the Prepetition Secured Liens. For the avoidance of doubt, the failure of any party in interest, including the Committee (if any), to obtain an order of this Court prior to the termination of the Challenge Period granting standing to bring any Challenge on behalf of the Debtors' estates shall not be a defense to failing to commence a Challenge prior to the termination of the Challenge Period as required under this paragraph 15 or to require or permit an extension of

the Challenge Period. For the avoidance of doubt, the investigation and Challenge rights afforded to the Committee (if any) and any other party-in-interest hereunder shall not be deemed a recognition, consent or agreement not to object to such Committee's or party-in-interest's, as applicable, standing to assert any such claim or cause of action.

16. Fees & Expenses. The Debtors are authorized and directed, without any further order of this Court, in accordance with this Interim Order, to pay any and all reasonable and documented out-of-pocket fees and expenses of the DIP Lenders, the DIP Agent, the Prepetition Secured Lenders and the Prepetition Agents including the reasonable and documented out-of-pocket fees and expenses of attorneys, advisors, accountants and other consultants and professionals (the "**Lender Professionals**"), whether incurred before, on or after the Petition Date and whether or not the transactions contemplated hereby are consummated, including, but not limited to, the Agent Fee (each under and as defined in the DIP Loan Agreement), and any other fees and expenses incurred by the DIP Lenders, the DIP Agent, the Prepetition Secured Lenders and the Prepetition Agents in connection with (a) the preparation, negotiation and execution of the DIP Orders, the DIP Documents, and the Adequate Protection Obligations; (b) the creation, perfection or protection of the DIP Liens, the Prepetition Secured Liens and the Adequate Protection Liens (including, without limitation, all search, filing and recording fees); (c) the on-going administration of the DIP Documents (including, without limitation, the preparation, negotiation and execution of any amendments, consents, waivers, assignments, restatements or supplements thereto) and the Chapter 11 Cases and any Successor Cases (including, without limitation, the filing of any proofs of claim); (d) the enforcement of the DIP Documents, the DIP Orders, the Prepetition Secured Loan Documents, or the Adequate Protection Obligations; and (e) any legal proceeding relating to or arising out of the Prepetition Secured Loan Documents, the

Prepetition Secured Loan Obligations, the DIP Facilities or the other transactions contemplated by the DIP Documents, the DIP Orders, or the Chapter 11 Cases, including the credit bid of the Prepetition Secured Obligations and/or the DIP Obligations (including (i) upon entry of the Interim Order, the Interim Roll-Up Amount and (ii) upon entry of the Final Order, the Final Roll-Up Amount). The Lender Professionals shall not be required to comply with the United States Trustee fee guidelines or file formal retention application with this Court. Solely with respect to any fees and expenses of the Lender Professionals incurred on or subsequent to the Petition Date, the Lender Professionals shall forward copies of summary invoices (the “**Invoiced Fees**”) to counsel to the Debtors, the U.S. Trustee, counsel for the Committee (if any) and such other parties as this Court may direct. The summary invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses; *provided, however*, that such summary invoices shall not be required to contain time entries but shall include a general, brief description of the nature of the matters for which services were performed and may be redacted to the extent necessary to protect any information subject to the attorney-client privilege or of any benefits of the attorney work product doctrine or other applicable privilege; *provided* that at any time a Lender Professional seeks payment of Invoiced Fees from the Debtors, the Debtors reserve their rights to request additional detail regarding the services rendered and expenses incurred by such Lender Professional, subject to such attorney-client privilege or benefits of the attorney work product doctrine or other applicable privilege.

17. If the Debtors, U.S. Trustee or the Committee (if any) objects to the reasonableness of the fees and expenses of any of the Lender Professionals and cannot resolve such objection within ten (10) Business Days of receipt of such invoices (the “**Review Period**”), then the Debtors, U.S. Trustee, or the Committee (if any), as the case may be, shall file with this Court and serve on

such Lender Professional an objection (the “**Fee Objection**”), and any failure by any such party to file a Fee Objection within the Review Period shall constitute a waiver of any right of such party to object to the applicable invoice. If no written objection is received by 12:00 PM (Eastern Standard Time), on the last day of the Review Period, the Debtors shall pay such invoices promptly and in no event later than two (2) Business Days thereafter. If an objection to a Lender Professional’s invoice is received within the Review Period, the Debtors shall promptly pay the undisputed amount of the invoice, and in no event later than two (2) Business Days of such request, and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Such reasonable and documented fees and expenses paid by the Debtors in accordance with this paragraph 17 shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever.

18. Carve Out.

(a) Carve-Out. As used in this Interim Order, the “**Carve Out**” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (in each case, other than any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors of the Debtors or any Committee) (the “**Allowed Professional Fees**”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “**Debtor Professionals**”) and the Creditors’ Committee pursuant to section 328 or 1103 of the Bankruptcy

Code (the “**Committee Professionals**” and, together with the Debtor Professionals, the “**Professional Persons**”) at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice and, with respect to Committee Professionals not to exceed the aggregate amounts set forth for Committee Professionals in the Approved Budget; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$1,000,000 incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “**Post-Carve Out Trigger Notice Cap**”). For purposes of the foregoing, “**Carve Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent, acting at the direction of the Required Lenders under and as defined in the DIP Documents (or, after the DIP Obligations have been indefeasibly paid in full, the Prepetition Agent acting at the direction of the Required Lenders (as such term is defined in the Prepetition First Lien Documents) under the Prepetition First Lien Documents), to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the New Money DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Delivery of Weekly Fee Statements. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, “**Estimated Fees and Expenses**”) incurred during the preceding week by such Professional Person (through Saturday of such week,

the “**Calculation Date**”), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a “**Weekly Statement**”); provided that, within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person shall deliver one additional statement (the “**Final Statement**”) setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date (and the Debtors shall cause such Weekly Statement and Final Statement to be delivered on the same day received to the DIP Agent and Prepetition Agent). If any Professional Person fails to deliver a Weekly Statement within three (3) calendar days after such Weekly Statement is due, such Professional Person’s entitlement (if any) to any funds in the Pre-Carve Out Trigger Notice Reserve (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such period for such Professional Person.

(c) Carve-Out Reserves.

(i) Commencing with the week ended June 9, 2023, and on or before the Thursday of each week thereafter, the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the sum of (a) the greater of (i) the aggregate unpaid amount of all Estimated Fees and Expenses reflected in the Weekly Statement delivered on the immediately prior Wednesday to the Debtors and the

DIP Agent, and (ii) the aggregate amount of unpaid Allowed Professional Fees contemplated to be incurred in the Approved Budget during such week, *plus* (b) the Post Carve-Out Trigger Notice Cap, *plus* (c) an amount equal to the amount of Allowed Professional Fees set forth in the Budget for the week occurring after the most recent Calculation Date and the two weeks after such week. The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust (the “**Funded Reserve Account**”) to pay such Allowed Professional Fees (the “**Funded Reserves**”) prior to any and all other claims, and all payments of Allowed Professional Fees incurred prior to the Termination Declaration Date shall be paid first from such Funded Reserve Account. For the avoidance of doubt, the DIP Lenders shall have no obligation to fund aggregate fees and expenses in (a) other than with respect to Debtor Professionals, the amounts set forth in the Approved Budget or (b) excess of the DIP Commitments. Other than with respect to Debtor Professionals, Professional Person’s entitlement (if any) to any funds in the Funded Reserves shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Approved Budget for such Professional Person; *provided*, that, in no event shall any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors of the Debtors, whether funded in the Funded Reserve Account or otherwise, be paid until the consummation of a Sale Transaction.

(ii) On the day on which a Carve Out Trigger Notice is given by the DIP Agent to the Debtors with a copy to counsel to the Creditors’ Committee (the “**Termination Declaration Date**”), the Carve Out Trigger Notice shall constitute a demand to the Debtors to, and the Debtors shall utilize all cash on hand as of such date, including cash in the Funded Reserve Account, and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such

amounts in a segregated account at the DIP Agent in trust to pay such then unpaid Allowed Professional Fees (the “**Pre-Carve Out Trigger Notice Reserve**”) prior to any other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtors to utilize all cash on hand as of such date, including cash in the Funded Reserve Account, and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve -Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the “**Post-Carve Out Trigger Notice Reserve**” and, together with the Pre-Carve Out Trigger Notice Reserve, the “**Carve Out Reserves**”) prior to any and all other claims.

(d) Application of Carve-Out Reserves.

(i) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “**Pre-Carve Out Amounts**”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until indefeasibly paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, below, all remaining funds shall be distributed first to the DIP Agent on account of the applicable DIP Obligations until indefeasibly paid in full, and thereafter to the Prepetition Secured Lenders in accordance with their rights and priorities under the Prepetition Intercreditor Agreement and as otherwise set forth in this Interim Order.

(ii) All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “**Post-Carve Out Amounts**”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Agent for the benefit of the DIP Lenders,

unless the DIP Obligations have been indefeasibly paid in full, in which case any such excess shall be paid to the Prepetition Secured Lenders in accordance with their rights and priorities under the Prepetition Intercreditor Agreement as of the Petition Date.

(iii) Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in paragraph 18(c), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively (subject to the limits contained in the Post-Carve Out Trigger Notice Cap), shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in paragraph 18(c), prior to making any payments to the DIP Agent or the Prepetition Secured Parties, as applicable.

(iv) Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve Out Trigger Notice, the DIP Agent and the Prepetition Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Agent for application in accordance with the DIP Documents.

(v) Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Loans (as defined in the DIP Loan Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out with respect to any shortfall (as described below), and (iii) subject to the limitations with respect to the DIP Agent, DIP Lenders, and Prepetition Secured Parties set forth in this paragraph 18, in no way shall the Initial Budget, any subsequent Approved Budget, Carve-

Out, Post-Carve Out Trigger Notice Cap or Carve-Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order or the DIP Documents, the Carve Out shall be senior to all liens and claims securing the DIP Obligations, the Adequate Protection Liens, and the DIP Superpriority Claim, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Loan Obligations.

(e) Payment of Allowed Professional Fees. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(f) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Agent, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Lenders shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Agent, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Lenders, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(g) Payment of Allowed Professional Fees on or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the

protections granted under this Interim Order, the DIP Documents, the Bankruptcy Code, and applicable law.

19. Protection of DIP Lenders' Rights.

(a) To the extent the Prepetition Secured Parties have possession of any Prepetition Collateral or DIP Collateral or have control with respect to any Prepetition Collateral or DIP Collateral, or have been noted as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Collateral, then the applicable Prepetition Agent and/or the Prepetition Secured Lenders, as applicable, shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee or gratuitous agent for perfection for the benefit of the DIP Agent and the DIP Lenders, and shall comply with the instructions of the DIP Agent (acting on behalf of the Required DIP Lenders) with respect to the exercise of such control.

(b) Other than as expressly consented to in writing by the DIP Agent (acting at the direction of the Required DIP Lenders), any proceeds of Prepetition Collateral received by the Prepetition Secured Lenders in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by the Prepetition Secured Lenders (other than on account of the Adequate Protection Obligations) shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Agent for the benefit of the DIP Lenders in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct.

20. Access to DIP Collateral. Subject to entry of a final order, notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent, exercisable on behalf of the DIP Lenders, subject to the terms of the DIP Documents, upon written notice to the landlord of any leased premises that an Event of Default has occurred

and is continuing, the DIP Agent may, at the direction of the Required DIP Lenders, subject to the applicable notice provisions in this Interim Order, enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from any applicable landlord thereunder; *provided*, that the DIP Agent shall be obligated only to pay rent of the Debtors that first accrues after the written notice referenced above is delivered and that is payable during the period of such occupancy by the DIP Agent, calculated on a daily per diem basis. Upon the Payment in Full of the DIP Obligations, the Prepetition Agents shall inure to all rights provided under this paragraph 20, subject to the relative rights and priorities of the Prepetition Intercreditor Agreement. Nothing contained herein shall require the DIP Agent or any other DIP Loan Party to assume any lease as a condition to the rights afforded in this paragraph 20.

21. Limitation on Charging Expenses Against Collateral. Subject of entry of the Final Order, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) or the Prepetition Collateral (except to the extent of the Carve Out) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lenders or the Prepetition Secured Lenders, in their respective capacities, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lenders or the Prepetition Secured Lenders and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Lenders or the Prepetition Secured Lenders to any charge, lien, assessment or claim against the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise.

22. Payments Free and Clear. Any and all payments or proceeds remitted to the DIP Agent or DIP Lenders or, subject to paragraph 15, the Prepetition Agents or Prepetition Secured Lenders pursuant to the provisions of this Interim Order, the Final Order (if and when entered) or the DIP Documents shall be irrevocable and received free and clear of any claim, charge, assessment or other liability, whether asserted or assessed by, through or on behalf of the Debtors.

23. Rights of Prepetition Secured Lenders Adequately Protected. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable to protect the interests of the Prepetition Secured Lenders.

24. Prepetition Secured Lender Consent; Right to Seek Additional Adequate Protection; No Admission. The Prepetition Secured Lenders are deemed to have consented to the Adequate Protection Obligations, the priming of the Prepetition Secured Liens by the DIP Liens, the roll-up of (a) upon entry of the Interim Order, the Interim Roll-Up Amount, representing a roll-up of the Emergency Bridge, and (b) upon entry of the Final Order, the Final Roll-Up Amount, and the use of Cash Collateral provided for herein; *provided, however*, that such consent is expressly conditioned upon the entry of this Interim Order, and such consent shall not be deemed to extend to any other Cash Collateral usage or other replacement financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Documents; *provided, further*, that such consent shall be of no force and effect in the event this Interim Order is reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the Prepetition Agents) or the DIP Documents and DIP Facility as set forth herein are not approved. The Adequate Protection Obligations provided to the Prepetition Secured Lenders hereunder adequately protects the Prepetition Secured Lenders as of the date hereof; *provided, however*, this

Interim Order: (a) is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Lenders to request additional or alternative forms of adequate protection from the Debtors; and (b) shall not be deemed an admission, acknowledgment, or stipulation by the Prepetition Secured Lenders that the Prepetition Secured Lenders are in fact adequately protected by the terms and conditions of this Interim Order or otherwise following the date of this Interim Order.

25. Perfection of DIP Liens and Adequate Protection Liens.

(a) This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens or to entitle the DIP Agent, the DIP Lenders and the Prepetition Secured Parties to the priorities granted herein.

(b) The DIP Agent, DIP Lenders, Prepetition Agent and Prepetition Secured Lenders are hereby authorized, but not required, to file or record (and to execute in the name of the Debtors, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, deposit account control agreements or to take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder, including, without limitation, with respect

to the DIP Liens and the Adequate Protection Liens. Whether or not the DIP Lenders or the Prepetition Secured Lenders shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, deposit account control agreements or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, properly perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Interim Order, without the necessity of filing or recording any financing statement, trademark filing, copyright filing, mortgage, notice of lien, deposit account control agreement or similar perfection document in any jurisdiction. Notwithstanding the foregoing, upon the request of the DIP Agent (at the direction of the Required DIP Lenders) or the Prepetition Agents (at the direction of the applicable required lenders), the Debtors, without any further consent of any party, are authorized and directed to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Lenders and the Prepetition Secured Lenders to further validate, perfect, preserve and enforce the DIP Liens and Adequate Protection Liens, as applicable. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(c) A certified copy of this Interim Order may, in the discretion of the DIP Lenders and the Prepetition Secured Lenders, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to permit the DIP Agent, DIP Lenders, Prepetition Agents

and Prepetition Secured Lenders to take all actions, as applicable, referenced in this subparagraph (c) and the immediately preceding subparagraph (b).

(d) Notwithstanding anything to the contrary in the Motion, the DIP Documents or this Interim Order, for purposes of this Interim Order, in no event shall the DIP Collateral include, or the DIP Liens or Adequate Protection Liens attach to, any lease, license, contract or agreement or other property right to which the Debtors are a party, or any such relevant Debtors' rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (i) the abandonment, invalidation, unenforceability or other impairment of any right, title or interest of the Debtors therein or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract or agreement or other property right pursuant to any provision thereof, unless, in the case of each of clauses (i) and (ii), the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code (such leases, licenses, contracts or agreements or other property rights are collectively referred to as the "**Specified Contracts**"); *provided, however*, the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims and Adequate Protection 507(b) Claim shall in all events attach to and have recourse from all proceeds, products, offspring or profits from any and all such Specified Contracts (including from the sale, transfer, disposition or monetization thereof).

26. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner, any responsible officer or any other estate representative subsequently appointed in these Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) or in violation of the DIP Documents at any time before the Payment in Full of (a) all DIP Obligations and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, and (b) all Prepetition Secured Loan Obligations, including

subsequent to the confirmation of any plan with respect to the Debtors and the Debtors' estates, and such financing is secured by any DIP Collateral or Prepetition Collateral, then all of the cash proceeds derived from such credit or debt shall immediately be turned over first to the DIP Agent, to be applied as set forth in the DIP Documents, and second to the Prepetition Agents to be applied as set forth in the Prepetition Intercreditor Agreement and the Prepetition Secured Loan Documents, except as provided under such confirmed plan (if applicable).

27. Disposition of DIP Collateral; Rights of DIP Lenders.

(a) The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any DIP Collateral or Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Agents (acting at the direction of the applicable required lenders), each as applicable (and no such consent shall be implied, from any other action, inaction or acquiescence), except as expressly permitted in the DIP Documents, Prepetition Secured Loan Documents, this Interim Order, and the Final Order (if and when entered), including budgets attached thereto, as applicable.

(b) The Debtors will (i) maintain books, records and accounts to the extent, and as required by, the DIP Documents, (ii) cooperate with, consult with, and provide to the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Secured Lenders, all such information and documents that any or all of the Debtors are obligated to provide under the DIP Documents or the provisions of this Interim Order, (iii) upon reasonable advance notice to counsel to the Debtors (email being sufficient), at reasonable times during normal business hours, permit consultants, advisors and other representatives (including third party representatives) of the DIP Agent, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Lenders (as applicable), to have

reasonable access to inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations and accounts with tier respective officers, employees, independent public accountants and other professional advisors as, and to the extent required by, the DIP Documents or the Prepetition Secured Loan Documents and permit the DIP Agent, at the direction of the Required DIP Lenders and the Prepetition Agent, at the direction of the Required Lenders, and their respective consultants, advisors and other representatives, to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets, and (iv) permit the DIP Agent and the Prepetition Agent to conduct, at its reasonable direction and at the Debtors' sole cost and expense, field audits, collateral examinations, liquidation valuations and inventory appraisals in respect of any or all of the DIP Collateral and the Prepetition Collateral, in each case, in accordance with the applicable DIP Documents and Prepetition Secured Loan Documents; *provided* that the information to be provided under this paragraph shall exclude any information for which confidentiality is owed to third parties, information subject to attorney client or similar privilege, or where such disclosure would not be permitted by any applicable requirements of law or any binding agreement entered into prior to the date of this Interim Order that would violate confidentiality obligations, except, to the extent that, upon the DIP Agent's reasonable request, the Debtors secure the consent of any applicable party required to waive any such confidentiality limitations with respect to any such requested information.

(c) No Debtor shall object to the DIP Agent (acting at the direction of the Required DIP Lenders) and/or the Prepetition Agents (acting at the direction of the applicable required

lenders) submitting a credit bid with respect to any sale of the Debtors' assets in accordance with paragraph 34 hereunder.

28. Maintenance of DIP Collateral. Until all DIP Obligations and Prepetition Secured Loan Obligations are Paid in Full and all Adequate Protection Obligations are indefeasibly paid in full and the termination of the DIP Lenders' obligations to extend credit under the DIP Facility, the Debtors shall (a) insure the DIP Collateral as required under the DIP Documents and the Prepetition Secured Loan Documents, as applicable; and (b) maintain the cash management system consistent with and subject to the terms and conditions of the Cash Management Order (as defined below), or as otherwise required by the DIP Documents.

29. Preservation of Rights Granted Under This Interim Order.

(a) Other than the Carve Out and other claims and liens expressly granted or permitted by this Interim Order and the DIP Documents, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Lenders or the Prepetition Secured Lenders shall be permitted until and unless the DIP Obligations, Adequate Protection Obligations or Prepetition Secured Loan Obligations have been Paid in Full. No lien or security interest shall be granted to any other party in any of the Specified Contracts without first granting such lien or security interest to the DIP Lenders or the Prepetition Secured Lenders, as applicable. It shall be an Event of Default under this Interim Order if, in any of these Chapter 11 Cases or any Successor Cases, any order is entered granting any claim or lien in contravention of this paragraph 29(a).

(b) Notwithstanding any order that may be entered dismissing the Chapter 11 Cases or any Successor Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered: (i) the DIP Superpriority Claims, the Adequate Protection 507(b) Claim, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities

as provided in this Interim Order until all DIP Obligations are Paid in Full and Adequate Protection Obligations shall have been indefeasibly Paid in Full (and that such DIP Superpriority Claims, Adequate Protection 507(b) Claim, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (ii) the other rights granted by this Interim Order shall not be affected; and (iii) this Court shall, to the extent permitted by applicable law, retain exclusive jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Interim Order.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred before the actual receipt of written notice by the DIP Lenders or the Prepetition Secured Lenders, as applicable, of the effective date of such reversal, modification, vacation or stay; or (ii) the validity, priority or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, modification, vacation or stay of any use of Cash Collateral, any DIP Obligations, DIP Liens, Adequate Protection Obligations or Adequate Protection Liens incurred or granted by the Debtors to or for the benefit of the DIP Agent, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Lenders, as the case may be, before the actual receipt of written notice by the DIP Agent, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Lenders, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lenders and the Prepetition Secured Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP

Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection Obligations and all other rights and remedies of the DIP Secured Parties and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting the Chapter 11 Cases to a case under chapter 7, dismissing the Chapter 11 Cases or any Successor Cases, or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral or Prepetition Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases, in any Successor Cases or following dismissal of the Chapter 11 Cases or any Successor Cases, as applicable, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection Obligations and all other rights and remedies of the DIP Lenders and the Prepetition Secured Lenders granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the entry of the Final Order or the DIP Obligations are Paid in Full and Adequate Protection Obligations are indefeasibly Paid in Full, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

(e) The entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the right of any party (including, but not limited to, the DIP Secured Parties and the Prepetition Secured Parties) to object to the allowance of any professional fees or expenses of any Professional Person, which rights are expressly preserved, (b) the DIP Secured Parties' and Prepetition Secured Parties' right to seek any other or supplemental relief in respect of the Debtors; (c) any of the rights of any of the DIP Secured Parties and the Prepetition Secured Parties under the Bankruptcy Code or under applicable non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Chapter 11 Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans; or (iv) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the DIP Secured Parties or Prepetition Secured Parties.

(f) Unless and until all DIP Obligations are indefeasibly Paid in Full and all New Money DIP Loans are terminated, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Secured Loan Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral; and (ii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral.

30. Cash Management. Unless otherwise agreed by the DIP Lenders and the Prepetition Secured Lenders, in their respective capacities, the Debtors shall maintain their cash

management arrangements in all material respects in a manner consistent with that described in the applicable “first-day” order and the related motion seeking authorization to continue the Debtors’ cash management arrangements (the “**Cash Management Order**”) or any further Court order. Subject to this Interim Order, the Debtors and the financial institutions where the Debtors maintain deposit accounts (as identified in the Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such deposit accounts upon receipt of any direction to that effect from the DIP Agent (acting at the direction of the Required DIP Lenders) in accordance with the DIP Documents.

31. Limitation on Use of DIP Loans, DIP Collateral, and Prepetition Collateral. Notwithstanding any other provision of this Interim Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve Out, may be used directly or indirectly by the Debtors, the Committee (if any), or any trustee appointed in the Chapter 11 Cases or any Successor Cases, or any other person, party or entity seeking authorization to obtain liens or security interests that are senior to, or *pari passu* with, the DIP Liens or the Prepetition Secured Liens (except to the extent expressly set forth herein) in connection with the investigation (including by way of examination or discovery proceeding), preparation, assertion, initiation, joinder, support for, or prosecution of any claims, counter-claims, causes of action, adversary proceedings, applications, motions, objections, defenses or other litigation or contested matter (a) against, or adverse to the interests of, in any capacity, the DIP Lenders or the Prepetition Secured Lenders or their respective Representatives with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (ii) any so-called “lender liability” claims and causes of action; (iii) any action

with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the DIP Obligations, the DIP Superpriority Claims, the DIP Liens, the DIP Documents, the liens of the Prepetition Agents and Prepetition Secured Lenders, the Prepetition Secured Loan Documents and the Prepetition Secured Loan Obligations; (iv) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the DIP Obligations or the Prepetition Secured Loan Obligations; or (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) the DIP Agent or the DIP Lenders hereunder or under any of the DIP Documents, or (B) the Prepetition Agents or the Prepetition Secured Lenders under any of the Prepetition Secured Loan Documents (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the DIP Agent's or the DIP Lenders' assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the applicable DIP Documents, the Interim Order, and the Final Order), or any action purporting to do the foregoing in respect of the Prepetition Secured Loan Obligations, liens on the Prepetition Collateral, DIP Obligations, DIP Liens on the DIP Collateral, DIP Superpriority Claims, or the Adequate Protection Obligations, Adequate Protection Liens and Adequate Protection 507(b) Claim granted to the Prepetition Secured Lenders, as applicable, under the Interim Order or the Final Order, as applicable, or (b) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to, the Prepetition Secured Loan Obligations, the Adequate Protection Obligations, the DIP Obligations, or the liens, claims, rights, or security interests granted under this Interim Order, the Final Order and the DIP Documents, including, in each case for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; *provided, however*, advisors

to any Committee may investigate any potential Challenges with respect to the Prepetition Secured Loan Documents, the Prepetition Secured Loan Obligations, or the Prepetition Secured Liens during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed \$50,000.00 in the aggregate; (c) to prevent, hinder, or otherwise delay the Prepetition Secured Lenders or the DIP Lenders, as applicable, in the enforcement or realization on the Prepetition Secured Loan Obligations, Adequate Protection Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims, and rights granted to such parties under the Interim Order or the Final Order, each in accordance with the DIP Documents, the Prepetition Secured Loan Documents, this Interim Order, or the Final Order (if and when entered), other than, and subject to the notice period set forth in paragraph 13 hereof, to seek a determination that an Event of Default has not occurred or is not continuing; (d) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties or the DIP Secured Parties under this Interim Order, the Prepetition Secured Loan Documents or the DIP Documents, as applicable; (e) to apply to the Court for authority to approve superpriority claims or grant liens or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the Carve Out or the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and Adequate Protection 507(b) Claim granted to the Prepetition Secured Lenders and the DIP Lenders unless all DIP Obligations, Adequate Protection Obligations and claims granted to the DIP Lenders or Prepetition Secured Lenders under this Interim Order, have been indefeasibly Paid in Full or otherwise agreed to in writing by the DIP Lenders and the Prepetition Secured Lenders; or (f) to seek to pay any amount on account of any claims arising before the Petition Date unless such payments are agreed to in writing by the DIP Lenders or are otherwise included in the Approved Budget, subject to Permitted Variances. For the avoidance of

doubt, nothing in this paragraph 31 shall prohibit the Debtors from responding to, objecting to, or complying with discovery requests by a statutory unsecured creditors' committee (if any) appointed in the chapter 11 cases, in whatever form, made in connection with any such investigation, the payment of any Debtor Professionals fees related thereto, or from contesting or challenging whether an Event of Default, as applicable, has in fact occurred, from the proceeds of the DIP Loans.

32. Exculpation; Loss or Damage to Collateral. Nothing in this Interim Order or the DIP Documents, or any other documents related to these transactions, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. The DIP Secured Parties and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (a) the safekeeping of the DIP Collateral or the Prepetition Collateral, (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (c) any Diminution in Value thereof, or (d) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of the DIP Collateral and the Prepetition Collateral shall be borne by the Debtors.

33. Indemnification. The Debtors shall indemnify and hold harmless the DIP Secured Parties and the Prepetition Secured Parties in accordance with the terms and conditions of the DIP Documents and the Prepetition Secured Loan Documents, as applicable.

34. Credit Bidding. Subject to section 363(k) of the Bankruptcy Code, (a) upon entry of this Interim Order the DIP Agent (at the direction of the Required DIP Lenders) shall have the right to credit bid, in accordance with the DIP Documents, on a dollar for dollar basis, up to the

full amount of the DIP Obligations (including the Interim Roll-Up Amount and, upon entry of the Final Order, the Final Roll-Up Amount, and any accrued interests and expenses) in any sale of the DIP Collateral in accordance with section 363(k) of the Bankruptcy Code and, (b) subject to the preservation of rights provided in paragraph 15 of this Interim Order, the Prepetition Agents (acting at the direction of the applicable required lenders) shall have the right to credit bid up to the full amount of the Adequate Protection Obligations and the Prepetition Secured Loan Obligations in the sale of any Prepetition Collateral whether (with respect to both (a) and (b) above) pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for the Debtors under section 725 of the Bankruptcy Code and each of the DIP Agent and the Prepetition Agents, in their respective capacities as such, shall be deemed a qualified bidder (or such analogous term or capacity) in connection with any such sale (such a credit bid described in this paragraph 34, the “**Credit Bid**”).

35. Application of Sale Proceeds. Notwithstanding anything herein to the contrary: (a) the right of the DIP Lenders to consent to the sale of any portion of the DIP Collateral, on terms and conditions acceptable to the DIP Lenders, are hereby expressly reserved and not modified, waived or impaired and (b) unless otherwise ordered by the Court, including without limitation pursuant to the Sale Order, all cash proceeds generated from the sale of any assets secured by the Prepetition Secured Liens or the DIP Liens shall be paid to the DIP Lenders and the Prepetition Secured Lenders upon the closing of such sale for permanent application against the obligations owing by the Debtors under the DIP Documents in accordance with the terms and conditions of the DIP Orders, the DIP Documents and the Prepetition Secured Loan Documents, each as

applicable, until such time as all DIP Obligations and the Prepetition Secured Loan Obligations have been Paid in Full and all Adequate Protection Obligations have been indefeasibly paid in full.

36. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate the terms and provisions of this Interim Order to the extent necessary to perform all acts and to make, execute, and deliver all instruments and documents (including the DIP Loan Agreement, any security and pledge agreement, and any mortgage to the extent contemplated thereby, or the DIP Loan Agreement), and to pay all fees (including all amounts owed to the DIP Lenders and the DIP Agent under the DIP Documents) that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility, including, without limitation, to (a) permit the Debtors to grant the DIP Liens, the Adequate Protection Liens, the DIP Superpriority Claims and the Adequate Protection 507(b) Claim; (b) permit the Debtors to perform such acts that may be necessary or appropriate to assure the perfection and priority of the liens granted herein, including at the request of the DIP Agent and/or the Prepetition Agent; (c) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties and the Prepetition Secured Parties under the DIP Documents, the DIP Facility and this Interim Order; and (d) authorize the Debtors to pay, and the DIP Secured Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Interim Order, the DIP Documents and the Approved Budget, subject to Permitted Variances.

37. Interim Order Governs. In the event of any inconsistency between the provisions of this Interim Order, on the one hand, and the DIP Documents, the Prepetition Secured Loan Documents or any other order entered by this Court (other than the Final Order), on the other hand, the provisions of this Interim Order shall govern. Notwithstanding anything to the contrary in any

other order entered by this Court, any payment made pursuant to, and any authorization contained in any other order entered by this Court shall be consistent with and subject to the requirements set forth in this Interim Order, the Final Order (upon its entry) and the DIP Documents, including the Approved Budget.

38. No Modification of Interim Order. Until and unless the DIP Obligations, and Prepetition Secured Loan Obligations have been Paid in Full and the Adequate Protection Obligations have been indefeasibly Paid in Full, and all commitments to extend credit under the DIP Facility have been terminated, the Debtors shall not seek or consent to, directly or indirectly, without the prior written consent of (A) the DIP Agent (acting at the direction of the Required DIP Lenders) and (B) with respect to any provisions that impact the legal or economic rights of the Prepetition Secured Parties, the applicable Prepetition Agent (acting at the direction of the applicable required lenders), any material modification, stay, vacatur or amendment to this Interim Order.

39. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases and any Successor Cases, including the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, the Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estates of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtor) to the extent permitted by applicable law and shall inure to the benefit of the DIP Lenders, the Prepetition Secured Lenders, and the Debtors and their respective successors and

assigns; *provided, however*, that except to the extent expressly set forth in this Interim Order, the DIP Lenders and the Prepetition Secured Lenders shall have no obligation to permit the use of the DIP Collateral or Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

40. No Liability to Third Parties. Except as explicitly provided for herein or in any of the DIP Documents, the Debtors stipulate and the Court finds that the DIP Lenders and the Prepetition Secured Lenders, in their respective capacities as such, shall not (a) be deemed to have liability to any third party or be deemed to be in control of the operation of any of the Debtors or to be acting as a “controlling person,” “responsible person,” “owner or operator,” or “participant” with respect to the operation or management of any of the Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any other federal, state, or applicable international statute or regulation) or (b) be liable to any current or former employee of the Debtors under any applicable law, including, without limitation, the Workers Adjustment and Retraining Notification Act and similar state laws, or (c) owe any fiduciary duty to any of the Debtors, their creditors or estates, or shall constitute or be deemed to constitute a joint venture or partnership with any of the Debtors as a result of their extension of credit under the DIP Documents or the Prepetition Secured Loan Documents.

41. Proofs of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any Successor Cases to the contrary, neither the Prepetition Secured Parties nor the DIP Lenders or DIP Agent shall be required to file proofs of claim in the Chapter 11 Cases or any Successor Cases to assert claims on behalf of

themselves for payment of the Prepetition Secured Loan Obligations or the DIP Obligations, including any principal, unpaid interest (including default interest therein), fees, expenses, and other amounts under the Prepetition Secured Loan Documents or the DIP Documents, as applicable. The statements of claim in respect of the Prepetition Secured Loan Obligations or the DIP Obligations, as set forth in this Interim Order, together with any evidence accompanying the Motion and presented at the Interim Hearing, are deemed sufficient to, and do, constitute proofs of claim in respect of such debt and such secured status. Subject to the preservation of rights provided in paragraph 15 of this Interim Order, the Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition Secured Parties in respect of all of the Prepetition Secured Loan Obligations and for the DIP Lenders and DIP Agent in respect of all of the DIP Obligations. In addition, the Prepetition Secured Parties and the DIP Lenders and DIP Agent shall not be required to file any request for allowance or payment of any administrative expenses, and this Interim Order shall be deemed to constitute a timely filed request for allowance or payment of any Prepetition Secured Loan Obligation or DIP Obligation constituting administrative expenses, as applicable.

42. No Third-Party Rights. Except as explicitly provided for herein or in any of the DIP Documents, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary.

43. No Waiver. No delay or failure by the Prepetition Agents, Prepetition Secured Lenders, DIP Agent or DIP Lenders in the exercise of their respective rights and remedies under the DIP Documents, the Prepetition Secured Loan Documents or this Interim Order, as applicable, shall constitute a waiver, in whole or in part, of any of such party's rights hereunder or otherwise.

44. Insurance. Upon entry of this Interim Order and to the fullest extent provided by applicable law, to the extent that the Prepetition Secured Lenders and/or the Prepetition Agents are listed as loss payee(s) under the Debtors' insurance policies that in any way relate to the DIP Collateral, the DIP Lenders and/or DIP Agent, as appropriate, are also deemed to be the loss payee(s) under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies in the order of priorities set forth herein.

45. [Reserved].

46. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates; *provided, however*, that the DIP Borrowers and DIP Guarantors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations and Adequate Protection Obligations in accordance with the terms hereof and the DIP Documents.

47. Effectiveness. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable as of the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 or any Local Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

48. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

49. Payments Held in Trust. Except as expressly permitted in this Interim Order or the DIP Documents, including in respect of the Carve Out, in the event that any person or entity

receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source before Payment in Full of all DIP Obligations and Payment in Full of the Adequate Protection Obligations under the DIP Documents and termination of the DIP Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Lenders and the Prepetition Secured Lenders and shall immediately turn over such proceeds to the DIP Lenders and/or the Prepetition Secured Lenders, as applicable, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Interim Order.

50. Bankruptcy Rules. The requirements of the Local Rules and Bankruptcy Rules 4001, 6003 and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

51. Necessary Action. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Interim Order.

52. Release of DIP Secured Parties and Prepetition Secured Parties. Upon entry of this Interim Order, the Debtors, on their own behalf and their Estates, forever and irrevocably, to the maximum extent permitted by applicable law: (i) release, discharge, and acquit each of, the DIP Secured Parties (solely in their capacities as DIP Secured Parties) and, subject to the rights and limitations set forth in paragraph 15 of this Interim Order, the Prepetition Secured Parties (solely in their capacities as Prepetition Secured Parties), and in each case, each of their former or current officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates,

and predecessors-in-interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every type, including, without limitation, any so-called “lender liability” or equitable subordination claims or defenses, solely with respect to or relating to the negotiation and entry into the DIP Documents and the use of Cash Collateral; and (ii) waive, discharge and release any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and avoidability of the DIP Liens and the DIP Obligations; *provided* that nothing in this paragraph shall in any way limit or release the obligations of any DIP Secured Party under the DIP Loan Documents, this Interim Order, and the Final Order; *provided, further*, that the release described in subclause (ii) of this paragraph with respect to any Prepetition First Lien Secured Obligations that have been rolled up shall be (a) with respect to the Interim Roll-Up Amount, representing a roll-up of the Emergency Bridge, upon entry of the Interim Order and (b) with respect to the Final Roll-Up Amount, upon entry of the Final Order, and the rights and limitations set forth in paragraph 15 of this Interim Order.

53. Discharge. Subject to entry of the Final Order, except as otherwise agreed in writing by the DIP Agent (acting at the direction of the Required DIP Lenders) or the Prepetition Agents (acting at the direction of the applicable required lenders), as applicable, the DIP Obligations, Prepetition Secured Obligations, and Adequate Protection Obligations shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been Paid in Full, on or before the effective date of such confirmed plan of reorganization; *provided*, for the avoidance of doubt, that the DIP Agent (acting at the direction of the Required Lenders) has agreed to the sale of the Acquired Assets pursuant to the Bid Procedures

Order and the subsequent wind-down of the Debtors pursuant to the Restructuring Support Agreement, which shall include a wind-down budget in form and substance acceptable to the Required DIP Lenders. If any of the Debtors propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the Payment in Full (including by credit bid) of the DIP Obligations, Prepetition Secured Obligations, and Adequate Protection Obligations (a "**Prohibited Plan or Sale**") without the written consent of the DIP Agent (acting at the direction of the Required DIP Lenders) and the Prepetition Agents (acting at the direction of the applicable Required Lenders), the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default under the DIP Documents and such date shall constitute a Termination Date.

54. [Reserved].

55. Retention of Jurisdiction. The Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

56. Final Hearing. The Final Hearing to consider entry of the Final Order and approval of the DIP Facility and continued use of Cash Collateral is scheduled for [\_\_\_\_\_] , 2023 at [\_\_] [am/pm] (Prevailing Eastern Time) before this Court at the U.S. Bankruptcy Court for the District of Delaware, 824 Market Street N, 3<sup>rd</sup> Floor, Wilmington, DE 19801; *provided* that the Final Hearing may be adjourned or otherwise postponed upon the Debtors filing a notice of such adjournment with the consent of the DIP Agent (acting at the direction of the Required DIP Lenders). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

57. Objections. Objections, if any, to the relief sought at the Final Hearing must: (a) be in writing; (b) state the basis of such objection with specificity; (c) comply with the Bankruptcy Rules and the Local Rules; (d) be filed with the Court on or before **4:00 pm (Eastern Standard Time) on [\_\_\_\_\_], 2023** (the “**Objection Deadline**”); and (e) be served, so as to be received the same day as the objection is filed with the Bankruptcy Court, but in no event later than the Objection Deadline, on: (A) the Debtors, 257 East 200 South, Suite 1200, Salt Lake City, Utah 84111, Attn.: Eric Kamerath; (B) proposed counsel to the Debtors (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), (ii) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois, 60654, Attn.: Spencer Winters (spencer.winters@kirkland.com), Whitney C. Fogelberg (whitney.fogelberg@kirkland.com), and Alison J. Wirtz (alison.wirtz@kirkland.com), (iii) Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn.: Domenic E. Pacitti and Michael W. Yurkewicz, and (iv) Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn.: Morton R. Branzburg; (C) counsel for (i) the Prepetition First Lien Agent for the Prepetition First Lien Lenders and (ii) the DIP Agent for the DIP Lenders, King & Spalding LLP, 1185 Avenue of the Americas, 34th Floor, New York, New York 10036 (Attn: Roger Schwartz, Esq. (rschwartz@kslaw.com), Geoffrey King, Esq. (gking@kslaw.com), and Robert Nussbaum, Esq. (rnussbaum@kslaw.com)); (D) counsel for the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders, Proskauer Rose LLP, 11 Times Square, New York, New York, 10036 (Attn: David M. Hillman (dhillman@proskauer.com) and Libbie B. Osaben (losaben@proskauer.com)); (E) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington,

DE 19801 (Attn: Jane M. Leamy); and (F) counsel to any statutory committee appointed in the Debtors' bankruptcy cases.

58. The Debtors shall promptly serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing), to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court, and to the Committee (if any) after the same has been appointed, or such Committee's counsel, if the same shall have been appointed.

**Exhibit A**

**DIP Loan Agreement**

**SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION**

**FINANCING AGREEMENT**

**Dated as of June [●], 2023**

**by and among**

**PGX HOLDINGS, INC.,**

**as Parent and a Guarantor,**

**EACH SUBSIDIARY OF PARENT  
LISTED AS A BORROWER ON THE SIGNATURE PAGES HERETO,  
as Borrowers,**

**AND EACH PERSON  
LISTED AS A GUARANTOR ON THE SIGNATURE PAGES HERETO,  
as Guarantors,**

**THE LENDERS FROM TIME TO TIME PARTY HERETO,  
as Lenders,**

**and**

**BLUE TORCH FINANCE LLC,  
as Administrative Agent and Collateral Agent**

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**SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION  
FINANCING AGREEMENT**

Superpriority Secured Debtor-In-Possession Financing Agreement, dated as of [●], 2023, by and among PGX Holdings, Inc., a Delaware corporation (the “Parent”), each subsidiary of the Parent listed as a “Borrower” on the signature pages hereto (together with each other Person that executes a joinder agreement and becomes a “Borrower” hereunder, each a “Borrower” and collectively, the “Borrowers”), each party and subsidiary of the Parent listed as a “Guarantor” on the signature pages hereto (together with the Parent and each other Person that executes a joinder agreement and becomes a “Guarantor” hereunder, each a “Guarantor” and collectively, the “Guarantors”), the lenders from time to time party hereto (each a “Lender” and collectively, the “Lenders”), Blue Torch Finance LLC, a Delaware limited liability company (“Blue Torch”), as collateral agent for the Lenders (in such capacity, together with its permitted successors and assigns in such capacity, the “Collateral Agent”), and Blue Torch, as administrative agent for the Lenders (in such capacity, together with its permitted successors and assigns in such capacity, the “Administrative Agent” and together with the Collateral Agent, each an “Agent” and collectively, the “Agents”).

**RECITALS**

WHEREAS, on [●], 2023, (the “Petition Date”), the Borrowers and the other Loan Parties (collectively, the “Debtors” and, each individually, a “Debtor”) each commenced a chapter 11 case, which are being jointly administered under Case No. [●] (each a “Chapter 11 Case” and collectively, the “Chapter 11 Cases”) by filing separate voluntary petitions for reorganization under Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. 101 *et seq.* (the “Bankruptcy Code”), with the United States Bankruptcy Court for the District of Delaware (together with any other court having jurisdiction over the Chapter 11 Cases or any proceeding therein from time to time, the “Bankruptcy Court”); and each Debtor continues to operate its businesses and manage its properties as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, certain of the Lenders and/or certain of their affiliates or controlled funds provided financing to the Borrowers, pursuant to that certain First Lien Financing Agreement, dated as of July 21, 2021 among the Borrowers, the guarantors from time to time party thereto, the lenders party thereto from time to time (the “Prepetition First Lien Lenders”), and Blue Torch Finance LLC as administrative agent and collateral agent (the “Prepetition First Lien Agent”) (as amended by that certain Amendment No. 1 to First Lien Financing Agreement, dated as of July 20, 2022, that certain Amendment No. 2 to First Lien Financing Agreement, dated as of December 28, 2022, that certain Amendment No. 3 to First Lien Financing Agreement, dated as of March 31, 2023, and as further amended, restated, amended and restated, supplemented or otherwise modified through the Petition Date, the “Prepetition First Lien Financing Agreement” and, together with all related Loan Documents (as defined therein), the “Prepetition First Lien Loan Documents”, and the outstanding principal amount of term loans under the Prepetition First Lien Financing Agreement, the “Prepetition First Lien Obligations”);

WHEREAS, prior to the Petition Date, certain lenders provided financing to the Borrowers, pursuant to that certain Second Lien Financing Agreement, dated as of July 21, 2021, among the Borrowers, the guarantors from time to time party thereto, the lenders party thereto from time to time (the “Prepetition Second Lien Lenders” and together with the Prepetition First Lien Lenders, the “Prepetition Lenders”), and Prospect Capital Corporation as administrative agent and Collateral Agent (the “Prepetition Second Lien Agent” and together with the Prepetition First Lien Agent, the “Prepetition Agents”) (as amended by that certain Amendment No. 1 to Second Lien Financing Agreement, dated as of December 28, 2022 and as further amended, restated, amended and restated, supplemented or otherwise modified through the Petition Date, the “Prepetition Second Lien Financing Agreement” together with the Prepetition First Lien Financing Agreement, the “Prepetition Financing Agreements” and, the Prepetition Second Lien Financing Agreement together with all related Loan Documents (as defined therein), the “Prepetition Second Lien Loan Documents” and together with the Prepetition First Lien Loan Documents, the “Prepetition Loan Documents”, and, the outstanding principal amount of term loans under the Prepetition Second Lien Financing Agreement, the “Prepetition Second Lien Obligations” and together with the Prepetition First Lien Obligations, the “Prepetition Obligations”);

WHEREAS, prior to the Petition Date, Blue Torch and Prospect Capital Corporation entered into that certain Intercreditor Agreement, dated as of July 21, 2021, and acknowledged by the Borrowers and guarantors party thereto (as amended by that certain Consent and Amendment No. 1 to Intercreditor Agreement, dated as of December 28, 2022, and as further amended, restated, amended and restated, supplemented or otherwise modified through the Petition Date, the “Prepetition Intercreditor Agreement”);

WHEREAS, the Borrowers have requested that the Lenders party hereto provide a senior secured, superpriority debtor-in-possession term loan facility available in multiple draws as set forth herein to the Borrowers in the maximum aggregate amount of \$[19,925,000], consisting of (i) an interim term loan facility in an aggregate maximum amount of \$[12,000,000]; and (ii) a final delayed draw term loan facility in an aggregate maximum principal amount of \$[7,925,000] (clauses (i) and (ii) hereof, the “New Money DIP Facility”) and (iii) a roll-up facility in the aggregate maximum principal amount of \$[42,750,000], representing a roll-up of Prepetition First Lien Obligations on a [two] dollars to one dollar basis of the Commitments hereunder plus a one dollar to one dollar basis of any Collateral Agent Advances (as defined in the Prepetition First Lien Financing Agreement) made pursuant to the Prepetition First Lien Financing Agreement, which shall consist of (x) \$2,900,000 in Collateral Agent Advances (as defined in the Prepetition First Lien Financing Agreement), which shall be included in the Interim DIP Order (the “Interim Roll-Up Financing”, and such loans the “Interim Roll-Up Loans”), which shall be included in the Interim DIP Order and (y) \$39,850,000 (the “Final Roll-Up Financing”, and such loans the “Final Roll-Up Loans”), which shall be included, in the Final DIP Order (clause (iii) hereof, the “Roll-Up DIP Facility” and together with the New Money DIP Facility, the “DIP Facility”);

WHEREAS, each of the Guarantors will guaranty all of the Obligations under the Loan Documents;

WHEREAS, in order to secure the Obligations of the Borrowers and the other Guarantors under the Loan Documents, the Borrowers and the Guarantors will each grant to the Administrative Agent, for the benefit of Administrative Agent and all other Secured Parties, subject to the Carve-Out, a security interest in and a DIP Lien upon substantially all of the now existing and hereafter acquired property of each of the Borrowers and the Guarantors;

WHEREAS, the relative priority of the DIP Liens and security interests granted to secure the Obligations in relation to the Liens and security interests securing the Prepetition Obligations will be set forth in the DIP Orders;

WHEREAS, each of the Borrowers and the other Loan Parties will provide to the Prepetition Agents and Prepetition Lenders under the Prepetition Loan Documents, adequate protection in accordance with the DIP Orders; and

WHEREAS, the Lenders are willing to extend such credit to the Borrowers and the other Loan Parties on the terms and subject to the conditions set forth herein and the DIP Orders, as applicable.

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

## ARTICLE I

### DEFINITIONS; CERTAIN TERMS

SECTION 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

“Account Debtor” means, with respect to any Person, each debtor, customer or obligor in any way obligated on or in connection with any Account (as defined in the Uniform Commercial Code) of such Person.

“Action” has the meaning specified therefor in Section 12.12.

“Additional Amount” has the meaning specified therefor in Section 2.09(a).

“Adjusted Term SOFR” means, for purposes of any calculation, the rate per annum equal to the Term SOFR for such calculation plus the Term SOFR Adjustment; *provided*, that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“Administrative Agent” has the meaning specified therefor in the preamble hereto.

“Administrative Agent's Accounts” means one or more accounts designated by the Administrative Agent at a bank designated by the Administrative Agent from time to time as the accounts into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents and the Lenders under this Agreement and the other Loan Documents.

“Administrative Representative” has the meaning specified therefor in Section 4.05.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall (i) any Agent or any Lender (including, for the avoidance of doubt, Prospect and its Affiliates and Related Funds) and (ii) any other portfolio company of the Sponsor or its Affiliates, subject to Section 7.02(j), be considered an “Affiliate” of any Loan Party.

“Agent” and “Agents” have the respective meanings specified therefor in the preamble hereto.

“Agent Fee” has the meaning specified therefor in Section 2.06(b).

“Agreement” means this Superpriority Secured Debtor-in-Possession Financing Agreement, including all amendments, restatements, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to this Agreement as the same may be in effect at the time such reference becomes operative.

“Anti-Corruption Laws” means all Requirements of Law concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), the UK Bribery Act of 2010, and the anti-bribery and anti-corruption laws and regulations of those jurisdictions in which the Loan Parties do business.

“Anti-Money Laundering Laws” means all Requirements of Law concerning or relating to terrorism or money laundering, including, without limitation, the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956-1957), the USA PATRIOT Act and the Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5332 and 12 U.S.C. §§ 1818(s), 1820(b) and §§ 1951-1959) and the rules and regulations thereunder, and any law prohibiting or directed against the financing or support of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B).

“Applicable Margin” means, as of any date of determination, (a) with respect to the interest rate of the New Money DIP Loans (or any portion thereof) and the Interim Roll-Up Loans, 8.50% per annum and (b) with respect to the Roll-Up Loans (other than the Interim Roll-Up Loans), the “Applicable Margin” as defined in the Prepetition First Lien Financing Agreement.

“Assignment and Acceptance” means an assignment and assumption entered into by an assigning Lender and an assignee (with the consent of any party whose consent is required by Section 12.07), and accepted by the Administrative Agent, in substantially the form of Exhibit B (including electronic documentation generated by MarkitClear or other electronic platforms) or such other form approved by the Administrative Agent and the Borrower.

“Authorized Officer” means, with respect to any Person, the chief executive officer, chief operating officer, chief financial officer, treasurer or other financial officer performing similar functions, president, executive vice president, vice president, secretary or assistant secretary of such Person or any other officer of such Person designated as an “Authorized Officer” by any of the foregoing officers.

“Automatic Stay” means the automatic stay imposed under Section 362 of the Bankruptcy Code.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.13(d).

“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 hereto.

“Benchmark” means, initially, the Term SOFR Reference Rate; *provided* that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.13(a).

“Benchmark Replacement” means with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Administrative Representative giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; *provided* that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Administrative Representative giving due consideration to any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body for Dollar-denominated syndicated credit facilities.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative or not to comply with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; *provided*, that such non-representativeness or non-compliance will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar

insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

- (c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative or do not, or as a specified future date will not, comply with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Start Date” means, in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90<sup>th</sup> day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means, the period (if any) (i)(a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.13 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.13 or (ii)(a) beginning at the time that a Benchmark Replacement Date has not occurred and the applicable tenor has not been published by the Term SOFR Administrator for each of the three (3) U.S. Government Securities Business Days prior to a Periodic Term SOFR Determination Day and (b) ending at the earlier of (I) the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.13 or (II) the Term SOFR Administrator has published the applicable tenor.

“Bid Procedures” has the meaning set forth in Section 5.01(n).

“Bid Procedures Order” means the entry by the Bankruptcy Court of an order approving the Bid Procedure.

“Blue Torch” has the meaning specified therefor in the preamble hereto.

“Board” means the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Board of Directors” means with respect to (a) any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) a partnership, the board of directors of the general partner of the partnership, (c) a limited liability company, the managing member or members or any controlling committee or board of directors of such company or the sole member or the managing member thereof, and (d) any other Person, the board or committee of such Person serving a similar function.

“Borrower” and “Borrowers” have the respective meanings specified therefor in the preamble hereto.

“Budget” means the Initial Budget, as amended and supplemented by any Budget Update delivered in accordance with Section 7.01(a)(v), in form and substance satisfactory to Administrative Agent at the direction of the Required Lenders (provided, such Budget Update shall be deemed to be in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders if the Budget Update has been received by the Administrative Agent, and the Administrative Agent does not provide any comments for a period of three (3) Business Days after receipt thereof by the Administrative Agent and, for the avoidance of doubt, such Budget Update shall become the approved Budget for all purposes hereunder).

“Budget Update” has the meaning set forth in Section 6.01(cc).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close and, if such day relates to any SOFR Loan, means any such day that is also a U.S. Government Securities Business Day.

“Capitalized Lease” means, with respect to any Person, any lease of (or other arrangement conveying the right to use) real or personal property by such Person as lessee that is required under GAAP to be capitalized on the balance sheet of such Person, subject to the last sentence of Section 1.04(a).

“Capitalized Lease Obligations” means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Carve Out” has the meaning set forth in the then applicable DIP Order.

“Carve Out Trigger Notice” has the meaning set forth in the then applicable DIP Order.

“Cash Collateral” has the meaning assigned to such term in the DIP Order.

“Cash Equivalents” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within six months from the date of acquisition thereof; (b) commercial paper, maturing not more than 270 days after the date of issue rated P 1 by Moody's or A 1 by Standard & Poor's; (c) certificates of deposit maturing not more than 270 days after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$500,000,000; (d) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (c) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof; (e) money market accounts maintained with mutual funds having assets in excess of \$2,500,000,000, which assets are primarily comprised of Cash Equivalents described in another clause of this definition; (f) marketable tax exempt securities rated A or higher by Moody's or A+ or higher by Standard & Poor's, in each case, maturing within 270 days from the date of acquisition thereof; and (g) in the case of any Foreign Subsidiary, cash and cash equivalents that are substantially equivalent in such jurisdiction to those described in clauses (a) through (f) above.

“Cash Flow Update” means a 13-week budget setting forth all forecasted receipts and disbursements on a weekly basis for such 13-week period beginning pursuant to Section 7.01(a)(v)(x), including the anticipated weekly uses of the DIP Proceeds for such period (and draws under this Agreement), which forecast shall be in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders.

“Cash Management Accounts” means the bank accounts of each Loan Party maintained at one or more Cash Management Banks listed on Schedule 8.01. All funds in each Cash Management Account shall be DIP Collateral and proceeds of DIP Collateral and the Administrative Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any deposit account or security account.

“Cash Management Agreement” means any agreement entered into from time to time by the Loan Party or any Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

“Cash Management Bank” has the meaning specified therefor in Section 8.01(a).

“Cash Management Obligations” means obligations owed by any Loan Party or any Subsidiary to any Cash Management Bank in connection with, or in respect of, any Cash Management Services.

“Cash Management Services” means (a) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft, automatic clearing house fund transfer

services, return items and interstate depository network services) and (c) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements.

“CFPB Action” means the action styled *Bureau of Consumer Financial Protection v. Progrexion Marketing, Inc.*, et al., Case No. 19-CV-00298-DBP, currently pending in the U.S. District Court for the District of Utah, any appeals or any other recourse in connection therewith, and any related investigation by any Governmental Authority

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means the occurrence of a Change of Control-PGX or a Change of Control-Lexington Law.

“Change of Control–Lexington Law” means each occurrence of any of the following:

(a) John C. Heath and Eric M. Kamerath cease to beneficially and of record own and control, directly or indirectly, at least 50.1% on a fully diluted basis of the aggregate outstanding voting and economic power of the Equity Interests of Lexington Law;

(b) John C. Heath ceases to beneficially and of record own and control, directly or indirectly, at least 80% on a fully diluted basis of the aggregate outstanding voting and economic power of the Equity Interests of Lexington Law;

(c) any sale of all or substantially all of the property or assets of Lexington Law other than in a sale or transfer to another Loan Party or as otherwise permitted by the terms of this Agreement; or

(d) a “Change of Control” (or any comparable term or provision) under or with respect to any of the Equity Interests or Indebtedness of Lexington Law.

“Change of Control-PGX” means each occurrence of any of the following:

(a) the Permitted Holders cease to beneficially and of record own and control, directly or indirectly, at least 50.1% on a fully diluted basis of the aggregate outstanding voting and economic power of the Equity Interests of the Parent;

(b) the Sponsor ceases to beneficially and of record own and control, directly or indirectly, at least 35.0% on a fully diluted, as converted basis of the aggregate outstanding voting power of the Equity Interests of the Parent;

(c) an amendment, waiver or other modification of the Amended and Restated Limited Liability Company Agreement of PGX Topco LLC, dated January 26, 2023, and effective as of December 31, 2022 (the “TopCo LLC Agreement”) in a manner that would either (i) remove any Unitholder Majority voting right (including, but not limited to, Section 8.08 of the TopCo LLC Agreement), or (ii) remove or make more onerous the ability of the holders of the Class B Units to purchase all outstanding Class A Units (including but not limited to Section 3.07 of the TopCo LLC Agreement) (each term capitalized in this paragraph and not otherwise defined herein shall have the meaning set forth in the TopCo LLC Agreement as in effect on January 26, 2023);

(d) the Parent shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting or economic power of the Equity Interests of each other Loan Party (other than Lexington Law) (other than in connection with any transaction permitted pursuant to Section 7.02(c)(i)), free and clear of all Liens (other than Permitted Liens);

(e) any sale of all or substantially all of the property or assets of any Loan Party other than in a sale or transfer to another Loan Party or as otherwise permitted by the terms of this Agreement; or

(f) a “Change of Control” (or any comparable term or provision) under or with respect to any of the Equity Interests or Indebtedness of the Parent or any of its Subsidiaries (including the Prepetition First Lien Financing Agreement and Prepetition Second Lien Financing Agreement).

“Chapter 11 Cases” has the meaning assigned to such term in the recitals to this Agreement.

“Closing Fee” has the meaning specified therefor in Section 2.06(a).

“Code” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“Collateral Agent” has the meaning specified therefor in the preamble hereto.

“Collections” means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

“Commitments” means, with respect to each Lender, the commitment of such Lender to make such Loan to the Borrowers in the amount set forth in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement.

“Committees” means collectively, the official committee of unsecured creditors and any other official committee appointed or approved in any Chapter 11 Case and each of such committees shall be referred to herein as a “Committee”.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “Interest Period”, the definition of “Reference Rate,” the definition of “U.S. Government Securities Business Day” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of Section 2.08 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Contingent Indemnity Obligations” means any Obligation constituting a contingent, unliquidated indemnification obligation of any Loan Party, in each case, to the extent (a) such obligation has not accrued and is not yet due and payable and (b) no claim has been made or is reasonably anticipated to be made with respect thereto.

“Contingent Obligation” means, with respect to any Person, any obligation of such Person guaranteeing or intending to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, and (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided, however*, that the term “Contingent Obligation” shall not include any product warranties extended in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation

is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Controlled Investment Affiliate” means, as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“Copyright Licenses” means all written licenses, written contracts or other written agreements, naming any Grantor as licensee or licensor and providing for the grant of any right to use or sell any works covered by any Copyright.

“Copyrights” means all domestic and foreign copyrights, whether registered or unregistered, including, without limitation, all copyright rights (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship fixed in any tangible medium of expression (including computer software and internet website content) now or hereafter owned, acquired or developed by any grantor, all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof), and all reissues, divisions, continuations, continuations in part and extensions or renewals thereof.

“Debtor Relief Law” means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

“Debtors” has the meaning set forth in the recitals hereto.

“Default” means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed to (i) fund all or any portion of its Loans within 2 Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Administrative Representative in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it

hereunder within 2 Business Days of the date when due, (b) has notified the Administrative Representative, or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within 3 Business Days after written request by the Administrative Agent or the Administrative Representative, to confirm in writing to the Administrative Agent and the Administrative Representative that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Administrative Representative), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity. Notwithstanding anything to the contrary herein, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and, subject to Section 4.04(f), such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Administrative Representative and each Lender.

“DIP Collateral” has the meaning provided in Section 4.10.

“DIP Credit Facility Super-Priority Claims” has the meaning set forth in the then applicable DIP Order.

“DIP Facility” has the meaning assigned to such term in the recitals to this Agreement.

“DIP Liens” shall have the meaning assigned to such term in the then applicable DIP Order.

“DIP Loan Funding Date” has the meaning provided in Section 5.02 hereof.

“DIP Order” means the Interim DIP Order or the Final DIP Order, as applicable, or each of them as the context may require.

“DIP Proceeds” means the proceeds received by the Borrowers from the New Money DIP Loans.

“DIP Termination Date” means the date that all outstanding Obligations will be due and payable in full in cash unless otherwise agreed to by the Administrative Agent at the direction of the Required Lenders on the earliest of (i) the date that is one hundred and five (105) calendar days

after the Petition Date, (ii) if the Final DIP Order has not been entered, twenty five (25) calendar days after the Petition Date, (iii) the acceleration of the Loans and the termination of the Commitments upon the occurrence, and during the continuance of an Event of Default (at the direction of the Required Lenders following and during the continuation of any Event of Default), (iv) the effective date of any Chapter 11 plan, (v) the date the Bankruptcy Court converts any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (vi) the date the Bankruptcy Court dismisses any of the Chapter 11 Cases, (vii) the date of consummation of any sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code; *provided*, for the avoidance of doubt, that in the case of the consummation of a sale pursuant to which the DIP Lenders have submitted a Credit Bid on account of some or all of the Obligations, the Obligations that are subject to such Credit Bid will not be due and payable in full in cash but shall be deemed satisfied in full by the consummation of such sale, and (viii) the date an order is entered in any bankruptcy case appointing a Chapter 11 trustee or examiner.

“Disposition” means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person; provided that “Disposition” and “Dispose” shall not include any issuance by Parent of any of its Equity Interests to another Person. For purposes of clarification, “Disposition” (i) shall include (a) the sale or other disposition for value of any contracts, (b) any disposition of property through a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, or (c) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification) and (ii) shall not include the use or other disposition of cash.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale or similar event shall be subject to the prior repayment in full of the Loans and all other Obligations (other than Contingent Indemnity Obligations) and the termination of the Commitments), (b) is redeemable (other than redemption in kind) at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d), prior to the date that is 91 days after the DIP Termination Date; *provided*, that if such Equity Interest is issued pursuant to a plan for the benefit of employees of any Loan Party or any Subsidiary or by any such plan to such employees, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by a Loan Party or a Subsidiary in order to satisfy applicable statutory or regulatory obligations; *provided, further*, that an Equity Interest in any Person that would not constitute a Disqualified Equity Interest but for terms thereof giving holders thereof the right to require such Person to redeem or purchase such Equity Interest upon the occurrence of a

change of control, asset sale or similar event shall not constitute a Disqualified Equity Interest if any such requirement becomes operative only after a date that is 91 days after the DIP Termination Date.

“Disqualified Institution” means each Person that is (a) designated by the Parent or any Borrower, by written notice delivered to the Administrative Agent on or prior to the Effective Date, as a disqualified institution, (b) any competitor, identified in written notice to the Administrative Agent (such written notice may only be updated by additional written notice after the Effective Date, without giving retroactive effect to any such additional written notice), of Parent or any of its Subsidiaries that is an operating company (“Competitor”) or (c) reasonably identifiable solely on the basis of such Person's name, as an affiliate of any person referred to in clauses (a) or (b) above; *provided*, that Disqualified Institutions shall include any Competitor that from time to time is added as a disqualified institution, pursuant to a written supplement to the list of disqualified institutions that are Disqualified Institutions delivered after the Effective Date by the Parent or any Borrower to, and approved in writing by, the Administrative Agent in its reasonable discretion (such approval not to be unreasonably withheld, delayed or conditioned). A list of the Disqualified Institutions shall be provided by the Administrative Agent to a Lender upon such Lender’s request in connection with a contemplated assignment or participation.

“Dollar,” “Dollars” and the symbol “\$” each means lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

“Effective Date” has the meaning specified therefor in Section 5.01.

“Employee Plan” means an employee benefit plan within the meaning of Section 3(3) of ERISA (other than a Multiemployer Plan), regardless of whether subject to ERISA, that any Loan Party or any of its ERISA Affiliates maintains, sponsors or contributes to or is obligated to contribute to.

“Environmental Claim” means any action, suit, complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment from any Person or Governmental Authority relating to or arising out of any threatened, alleged or actual (a) violation of, non-compliance with, or liability under, any Environmental Law, or (b) the manufacture, use, handling, processing, distribution, labeling, generation, transportation, storage, treatment, Release, threatened Release, disposal or arranging for the disposal of, or exposure to, any Hazardous Materials.

“Environmental Law” means any Requirement of Law relating to, regulating or governing (i) the pollution or protection of the environment, any environmental media, natural resources, human health (to the extent related to exposure to Hazardous Materials) or safety (to the extent related to exposure to Hazardous Materials), or (ii) the manufacture, use, handling, processing, distribution, labeling, generation, transportation, storage, treatment, Release,

threatened Release, disposal or arranging for the disposal of, or exposure to, any Hazardous Materials.

“Environmental Liability” means all liabilities (contingent or otherwise, known or unknown), monetary obligations, losses (including monies paid in settlement), damages, natural resource damages, costs and expenses (including all reasonable fees, costs, client charges and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest arising directly or indirectly as a result of, from, or based upon (a) any Environmental Claim, (b) any actual, alleged or threatened violation of or non-compliance with any Environmental Law or Environmental Permit, (c) any actual, alleged or threatened Release of, or exposure to, Hazardous Materials, (d) any Remedial Action, (e) any adverse environmental condition or (f) any contract, agreement or other arrangement pursuant to which liability is assumed or imposed contractually or by operation of law with respect to any of the foregoing (a)-(e).

“Environmental Lien” means any Lien in favor of any Governmental Authority arising out of any Environmental Liability.

“Environmental Permit” means any permit, license, authorization, approval, registration or entitlement required by or issued pursuant to any Environmental Law or by any Governmental Authority pursuant to Environmental Law.

“Equity Interests” means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting and (b) all securities convertible into or exchangeable for any of the foregoing and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any of the foregoing, whether or not presently convertible, exchangeable or exercisable.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

“ERISA Affiliate” means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member and which would be deemed to be a “controlled group” or under “common control” within the meaning of Sections 414(b), (c), (m) or (o) of the Internal Revenue Code or Sections 4001(a)(14) or 4001(b)(1) of ERISA.

“ERISA Event” means (a) the occurrence of a Reportable Event with respect to any Pension Plan; (b) the failure to meet the minimum funding standards of Section 412 or 430 of the Internal Revenue Code or Section 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA) or the failure to make a contribution or installment required under Section 412 or Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) a determination that any Pension Plan

is, or is expected to be, in “at risk” status (as defined in Section 430 of the Internal Revenue Code or Section 303 of ERISA); (d) a determination that any Multiemployer Plan is, or is expected to be, in “critical” or “endangered” status under Section 432 of the Internal Revenue Code or Section 305 of ERISA; (e) the filing of a notice of intent to terminate a Pension Plan or the treatment of an amendment to a Pension Plan as a termination under Section 4041 of ERISA; (f) the withdrawal by any Loan Party or any of its ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to any Loan Party or any of its ERISA Affiliates pursuant to Section 4063 or 4064 of ERISA; (g) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition that might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the imposition of liability on any Loan Party or any of its ERISA Affiliates pursuant to Section 4062(e) or 4069(a) of ERISA or by reason of the application of Section 4212(c) of ERISA; (i) the withdrawal of any Loan Party or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan or the receipt by any Loan Party or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (j) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any of its ERISA Affiliates of fines, penalties, taxes or related charges under Sections 4975 or 4971 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Plan; (k) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent, upon any Loan Party or any of its ERISA Affiliates; (l) the assertion of a claim (other than routine claims for benefits) against any Employee Plan or the assets thereof, or against any Loan Party or any of its ERISA Affiliates in connection with any Employee Plan or Multiemployer Plan; (m) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such Pension Plan (or such other Employee Plan) to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (n) the imposition on any Loan Party of any material fine, excise tax or penalty with respect to any Employee Plan or Multiemployer Plan resulting from any noncompliance with any Requirements of Law; (o) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan; or (p) the occurrence of any Foreign Plan Event.

“Event of Default” has the meaning specified therefor in Section 9.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Assets” means avoidance actions, but not the proceeds thereof.

“Excluded Subsidiary” means Creditco Limited (UK).

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the

laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.09, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.09(d) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Executive Order No. 13224” means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“Extraordinary Receipts” means any cash received by (i) the Parent or any of its Subsidiaries or (ii) Lexington Law not in the ordinary course of business (and not consisting of proceeds described in Section 2.05(c)(ii), (iii) or (v) hereof) limited solely to the following: (a) proceeds of insurance (including any R&W insurance policy and any similar policies) (other than to the extent such insurance proceeds are received by the Parent or any of its Subsidiaries as reimbursement for any losses, costs, expenses or charges related to the event resulting from the payment of such proceeds) (such proceeds, “Insurance Sale Proceeds”), (b) condemnation awards (and payments in lieu thereof) (other than to the extent such condemnation awards or payments are received by the Parent or any of its Subsidiaries as reimbursement for any losses, costs, expenses or charges related to the event resulting from the payment of such proceeds) (such proceeds, “Condemnation Proceeds”), (c) tax refunds and (d) indemnity payments (other than to the extent such indemnity payments are received by the Parent or any of its Subsidiaries as reimbursement for any losses, costs, expenses or charges related to the event resulting from the payment of such proceeds) (such proceeds, “Indemnity Proceeds”, and together with Insurance Sale Proceeds and Condemnation Proceeds, “Extraordinary Receipts Proceeds”).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal, tax or regulatory legislation, rules or official practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of Sections 1471 through 1474 of the Internal Revenue Code and the Treasury Regulations thereunder.

“FCPA” has the meaning specified therefor in the definition of Anti-Corruption Laws.

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent (or its delegate) from three Federal funds brokers of recognized standing selected by it.

“Final DIP Closing Date” means the date on which the conditions under Section 5.02 are satisfied or waived by the Administrative Agent at the direction of the Required Lenders.

“Final DIP Closing Fee” has the meaning specified therefor in Section 2.06(a).

“Final DIP Loan Commitment” means, with respect to each Lender holding a Final DIP Loan Commitment, the commitment of such Lender to make Final DIP Loans, which commitment is in the amount set forth opposite such Lender’s name on Schedule 1.01(A) hereto under the caption “Final DIP Loan Commitment”. The aggregate amount of the Final DIP Loan Commitments shall be the lesser of (a) \$[7,925,000] and (b) such amount as approved by the Bankruptcy Court for funding pursuant to the Final DIP Order.

“Final DIP Loans” means the term loans to be made from time to time on and after the Final DIP Closing Date and until the DIP Termination Date, in one or more drawings (but not to exceed one draw in any one-week period (unless the Required Lenders consent to more frequent draws)) in an aggregate principal amount not to exceed the aggregate Final DIP Loan Commitments.

“Final DIP Order” means an order entered by the Bankruptcy Court in the Chapter 11 Cases substantially in the form of the Interim DIP Order (with only such modifications thereto as are necessary to convert the Interim DIP Order to a final order and other modifications as are satisfactory in form and substance to the Administrative Agent at the direction of the Required Lenders).

“Financial Statements” means (a) the audited consolidated balance sheet of the (i) Parent and its Subsidiaries for the Fiscal Year ended December 31, 2021, and the related consolidated statement of operations, shareholders' equity and cash flows for the Fiscal Year then ended, and (b) the unaudited consolidated balance sheet of the Parent and its Subsidiaries for the three months ended March 31, 2023, and the related consolidated statement of operations and cash flows for the three months then ended.

“Fiscal Year” means the fiscal year of the (i) Parent and its Subsidiaries and (ii) Lexington Law, each ending on December 31 of each calendar year.

“Floor” means 1.50% per annum.

“Foreign Plan” means any employee benefit plan, program, policy, arrangement or agreement maintained, sponsored or contributed to, or for which there is an obligation to contribute to, by any Loan Party or any of its ERISA Affiliates that is subject to any Requirements of Laws

other than, or in addition to, the laws of the United States or any state thereof or the laws of the District of Columbia.

“Foreign Plan Event” means, with respect to any Foreign Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any Requirement of Law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make any required contribution or payment under any Requirement of Law within the time permitted by any Requirement of Law for such contributions or payments, (c) the receipt of a notice from a Governmental Authority relating to the intention to terminate any such Foreign Plan or to appoint a trustee or similar official to administer any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, (d) the incurrence of any liability by any Loan Party or any Subsidiary under any law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction with respect to a Foreign Plan that is prohibited under any Requirement of Law and that could reasonably be expected to result in the incurrence of any liability by any Loan Party or any Subsidiary, or the imposition on any Loan Party or any Subsidiary of any fine, excise tax or penalty with respect to a Foreign Plan resulting from any noncompliance with any Requirement of Law.

“Foreign Subsidiary” means any Subsidiary of the Debtors that is not a Domestic Subsidiary.

“Funding Losses” has the meaning specified therefor in Section 2.08.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis.

“Governing Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization, and the operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, declaration or other applicable agreement or documentation evidencing or otherwise relating to its formation or organization, governance and capitalization; and (d) with respect to any of the entities described above, any other agreement, instrument, filing or notice with respect thereto filed in connection with its formation, incorporation or organization with the applicable Governmental Authority in the jurisdiction of its formation, incorporation or organization.

“Governmental Authority” means any nation or government, any foreign Federal, state, territory, provincial, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Grantors” means each Borrower, each Guarantor and each other Person that executes a supplement, in form and substance acceptable to Administrative Agent and becomes an additional Grantor hereunder.

“Guaranteed Obligations” has the meaning specified therefor in Section 11.01.

“Guarantor” means (a) the Parent and each Subsidiary of the Parent listed as a “Guarantor” on the signature pages hereto, (b) affiliated debtors and debtors in possession in the Chapter 11 Cases and (c) each other Person which guarantees, pursuant to Section 7.01(b) or otherwise, all or any part of the Obligations; *provided* that, in no event shall Guarantors include any Excluded Subsidiary. For avoidance of doubt, Lexington Law shall be a Guarantor and will continue to perform under its operations agreements and other arrangements with Parent and its Subsidiaries, subject to modifications set forth in the DIP Order and/or the other “first day” orders.

“Guaranty” means (a) the guaranty of each Guarantor party hereto contained in Article XI hereof and (b) each other guaranty, in form and substance reasonably satisfactory to the Collateral Agent, made by any other Guarantor in favor of the Collateral Agent for the benefit of the Agents and the Lenders guaranteeing all or part of the Obligations.

“Hazardous Material” means any element, material, substance, waste, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic or hazardous substance, hazardous waste, universal waste, special waste, or solid waste or is otherwise characterized by words of similar import under any Environmental Law or that is regulated under, or for which liability or standards of care are imposed, pursuant to any Environmental Law, including, without limitation, petroleum, polychlorinated biphenyls; asbestos-containing materials, lead or lead-containing materials, urea formaldehyde-containing materials, radioactive materials, radon, per- and polyfluoroalkyl substances and mold.

“Highest Lawful Rate” means, with respect to any Agent or any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws applicable to such Agent or such Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“Holdout Lender” has the meaning specified therefor in Section 12.02(c).

“Indebtedness” means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the deferred purchase price for property or services; (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (e) all Capitalized Lease Obligations and purchase money Indebtedness of such Person; (f) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities (other than obligations and liabilities that are

cash collateralized); (g) [reserved]; (h) all monetary obligations under any receivables factoring, receivable sales or similar transactions and all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing; (i) all Contingent Obligations in respect of the obligations described in clauses (a) through (h) above; (j) all Disqualified Equity Interests; and (k) all obligations referred to in clauses (a) through (j) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; *provided* that notwithstanding the foregoing, Indebtedness shall be deemed not to include (a) trade payables, accrued expenses, prepaid or deferred revenue, intercompany liabilities and Contingent Obligations incurred in the ordinary course of business, in each case, to the extent not more than 90 days past due, (b) any unreimbursed amount under commercial letters of credit until one (1) Business Day after such an amount is drawn, (c) [reserved], (d) [reserved], (e) [reserved], (f) [reserved], (g) endorsements of checks or drafts arising in the ordinary course of business, (h) operating leases and (i) preferred Equity Interests to the extent not constituting Disqualified Equity Interests. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venture, except to the extent that such Person is not liable for such Indebtedness.

“Indemnified Matters” has the meaning specified therefor in Section 12.15.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitees” has the meaning specified therefor in Section 12.15.

“Initial Budget” means a 13-week operating budget setting forth all forecasted receipts and disbursements on a weekly basis for such 13-week period beginning as of the week of the Petition Date, including the anticipated weekly uses of the DIP Proceeds for such period (and draws under this Agreement), which forecast shall be in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders. Such Initial Budget shall be in the form set forth in Exhibit A hereto and also attached as an exhibit to the Interim DIP Order. Until supplemented pursuant to Section 6.01(cc) and approved (or deemed approved) by the Administrative Agent at the direction of the Required Lenders in accordance hereof, the Initial Budget shall constitute the Budget.

“Initial DIP Closing Fee” has the meaning specified therefor in Section 2.06(a).

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

“Intellectual Property” means all Copyrights, Patents, Trademarks and Other Intellectual Property.

“Intellectual Property License” means all (a) licenses or other similar rights provided to such Loan Party in or with respect to Intellectual Property owned or controlled by any other Person, and (b) licenses or other similar rights provided to any other Person in or with respect

to Intellectual Property owned or controlled by such Loan Party, in each case, including any software license agreements (other than license agreements for commercially available off the shelf software that is generally available to the public which have been licensed to a Loan Party).

“Interest Payment Date” means (x) with respect to the New Money DIP Loans and Interim Roll-Up Loans, [the first Business Day of each month after such Loan was made] and (y) with respect to the Roll-Up Loans (other than the Interim Roll-Up Loans), the DIP Termination Date; provided, for any Interest Payment Date pursuant to this clause (y), such payment shall either (1) be paid-in-kind or (2) in the case of the consummation of a sale pursuant to which the DIP Lenders have submitted a Credit Bid on account of some or all of the Obligations, the Obligations that are subject to such Credit Bid will not be due and payable in full in cash but shall be deemed satisfied in full by the consummation of such sale.

“Interest Period” means, with respect to each SOFR Loan, a period commencing on the date of the making of such SOFR Loan (or the continuation of a SOFR Loan or the conversion of a Reference Rate Loan to a SOFR Loan) and ending three months thereafter; *provided, however*, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon Adjusted Term SOFR from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is three month after the date on which the Interest Period began, as applicable, and (e) the Borrowers may not elect an Interest Period which will end after the DIP Termination Date.

“Interim DIP Loan Commitment” means, with respect to each Lender holding an Interim DIP Loan Commitment, the commitment of such Lender to make an Interim DIP Loan, which commitment is in the amount set forth opposite such Lender’s name on Schedule 1.01A hereto under the caption “Interim DIP Loan Commitment.” The aggregate amount of the Interim DIP Loan Commitments on the Effective Date shall be the lesser of (a) \$[12,000,000] and (b) such amount as approved by the Bankruptcy Court authorizing Interim DIP Loan Commitments pursuant to the Interim DIP Order.

“Interim DIP Loans” means the term loans to be made from time to time on and after the Effective Date and prior to entry of the Final DIP Order (but not to exceed one draw in any one-week period (unless the Required Lenders consent to more frequent draws)) in an aggregate amount not to exceed the Interim DIP Loan Commitment.

“Interim DIP Order” means the interim order entered by the Bankruptcy Court in the Chapter 11 Cases (as the same may be amended, supplemented, or modified from time to time after entry thereof in a manner satisfactory to the Administrative Agent and Required Lenders in their sole discretion) authorizing and approving, among other things, the DIP Facility, use of cash

collateral and the Transactions, which interim order is in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders.

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

“Inventory” means, with respect to any Person, all goods and merchandise of such Person leased or held for sale or lease by such Person, including, without limitation, all raw materials, work-in-process and finished goods, and all packaging, supplies and materials of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which would give rise to an Account or cash.

“Investment” means, with respect to any Person, (a) any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances or other extensions of credit (excluding Accounts arising in the ordinary course of business), capital contributions or acquisitions of Indebtedness (including, any bonds, notes, debentures or other debt securities), Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), (b) the purchase or ownership of any futures contract or liability for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or (c) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP.

“Known Event” means the commencement and continuation of the Chapter 11 Cases, the events leading up to the Chapter 11 Cases (including, for the avoidance of doubt, actions, proceedings and judgments in the CFPB Action prior to the Petition Date), the effect of the bankruptcy, the conditions in which the Debtors operate as existing on the Effective Date and/or the consummation of transactions contemplated by the Debtors’ “first day” pleadings reviewed by the Administrative Agent or Required Lenders.

“Lender” has the meaning specified therefor in the preamble hereto.

“Lexington Law” means John C. Heath, Attorney at Law, PC d/b/a Lexington Law.

“Lexington Law Operating Agreements” means the following contracts as in effect on the date hereof (each as defined on Schedule 6.01(v)): the Software Licensing Agreement, the Advertising Agreement, the Administrative Services Agreement, the Teleservices Outsourcing Agreement and the Cross Default Agreement.

“Licenses” means the Copyright Licenses, the Patent Licenses and the Trademark Licenses.

“Lien” means any mortgage, deed of trust, deed to secure debt, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any collateral assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

“Loan” means (a) the Interim DIP Loans, (b) the Final DIP Loans and (c) following the Roll-Up Effective Time, the deemed extensions of credit under Section 2.02(d) in the form of Roll-Up Loans, and “Loan” means any of such Loans.

“Loan Account” means an account maintained hereunder by the Administrative Agent on its books of account at the Payment Office, and with respect to the Borrowers, in which the Borrowers will be charged with all Loans made to, and all other Obligations incurred by, the Borrowers.

“Loan Document” means this Agreement, any Guaranty, any Notes, any joinder agreement, any Mortgage, any security agreement, the VCOC Management Rights Agreement, any landlord waiver, any collateral access agreement, any perfection certificate and any other agreement, instrument, certificate and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Loan or any other Obligation, in each case, as amended, supplemented or otherwise modified, renewed or replaced from time to time; provided, the Asset Purchase Agreement and related documentation shall not be considered a Loan Document hereunder.

“Loan Party” means any Borrower and any Guarantor.

“Material Adverse Effect” means the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, (i) the business, operations, properties or condition (financial or otherwise) of the Loan Parties and their subsidiaries from the Petition Date, collectively, (ii) the legality, validity or enforceability of any Loan Documents, the Interim DIP Order the Final DIP Order, (iii) the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents, (iv) the validity, perfection or priority of the DIP Liens granted pursuant to the Loan Documents, the Interim DIP Order or the Final DIP Order, or (v) the rights and remedies of the Administrative Agent, Collateral Agent and the Lenders under the Loan Documents taken as a whole; except in each case, those events, circumstances or conditions relating to the commencement and continuation of the Chapter 11 Cases.

“Material Contractual Counterparty” means any Person, on the other hand, whose agreements with any Loan Party are material to the business or operations of such Loan Party and to which the breach, nonperformance, cancellation or failure to renew of such agreements with such Person by any party thereto could reasonably be expected to have a Material Adverse Effect.

“Material Indebtedness” means Indebtedness of any Loan Party in an aggregate principal amount exceeding \$500,000; provided Material Indebtedness shall at all times include the Indebtedness incurred under the Prepetition First Lien Loan Documents and Prepetition Second Lien Loan Documents.

“Milestone” has the meaning assigned to such term in the then applicable DIP Order.

“Moody's” means Moody's Investors Service, Inc. and any successor thereto.

“Mortgage” means a mortgage, deed of trust or deed to secure debt, in form and substance reasonably satisfactory to the Collateral Agent, made by a Loan Party in favor of the

Collateral Agent for the benefit of the Agents and the Lenders, securing the Obligations and delivered to the Collateral Agent.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any of its ERISA Affiliates has contributed, or has been obligated to contribute, to at any time during the preceding six calendar years.

“Net Cash Proceeds” means, with respect to, any issuance or incurrence of any Indebtedness, any Disposition or the receipt of any Extraordinary Receipts by any Person or any of its Subsidiaries, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary, in connection therewith after deducting therefrom only (a) in the case of any Disposition or the receipt of any Extraordinary Receipts consisting of insurance proceeds or condemnation awards, the amount of any Indebtedness secured by any Permitted Lien (other than any such Permitted Lien required by the terms of this Agreement to rank junior to the Lien on such asset securing the Obligations) on any asset and required to be repaid in connection with such Disposition (or such receipt of Extraordinary Receipts) (other than Indebtedness assumed by the purchaser of such asset), together with any premium, penalty, interest, fees and expenses with respect to such Indebtedness, which is required to be, and is, repaid in connection therewith (other than Indebtedness under this Agreement), (b) reasonable fees and expenses related thereto incurred by such Person or such Subsidiary in connection therewith, (c) transfer or real property taxes paid to any taxing authorities by such Person or such Subsidiary in connection therewith, (d) net taxes to be paid in connection therewith (after taking into account any tax credits or deductions and any tax sharing arrangements), and (e) the amount of any reserves established as required by GAAP against liabilities in connection with any Disposition or any Extraordinary Receipt, in each case, to the extent, but only to the extent, that the amounts so deducted are (i) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries and (ii) properly attributable to such transaction or to the asset that is the subject thereof.

“New Money DIP Facility” has the meaning assigned to such term in the recitals to this Agreement.

“New Money DIP Loans” means the Interim DIP Loans and the Final DIP Loans.

“Non-U.S. Lender” has the meaning specified therefor in Section 2.09(d).

“Note” means a promissory note of the Borrowers, substantially in the form of Exhibit E hereto, evidencing the Indebtedness resulting from the making of the Loans and delivered to any Lender that requests such Note pursuant to Section 2.03(e) hereof, as such promissory note may be modified or extended from time to time, and any promissory note or notes issued in exchange or replacement thereof.

“Notice of Borrowing” has the meaning specified therefor in Section 2.02(a).

“Obligations” means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the Lenders arising under or in connection with this Agreement or any other Loan Document, whether or not the right of payment in respect of such

claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.01. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees, premiums, attorneys' fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent or any Lender (in its sole discretion) may elect to pay or advance on behalf of such Person and (c) Erroneous Distributions.

“OFAC” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Intellectual Property” means all trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how, formulae, rights of publicity and privacy and other general intangibles of like nature, now or hereafter acquired, owned or developed by any Grantor, and for the avoidance of doubt, shall include all Intellectual Property Licenses.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

“Parent” has the meaning specified therefor in the preamble hereto.

“Participant Register” has the meaning specified therefor in Section 12.07(i).

“Patent Licenses” means all written licenses, written contracts or other written agreements, naming any Grantor as licensee or licensor and providing for the grant of any right to manufacture, use or sell any invention covered by any Patent.

“Patents” means all domestic and foreign letters patent, design patents, utility patents, industrial designs, inventions, trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how, formulae and other general intangibles of like nature, now existing or hereafter acquired, owned or developed by any Grantor, and all applications, registrations and recordings thereof, and all reissues, divisions, continuations, continuations in part and extensions or renewals thereof.

“Payment Office” means the Administrative Agent's account or office located at 150 East 58<sup>th</sup> Street, 39<sup>th</sup> Floor, New York, New York 10155, or at such other office or offices of the Administrative Agent as may be designated in writing from time to time by the Administrative Agent to the Collateral Agent and the Administrative Representative.

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means an Employee Plan that is subject to Section 412 of the Internal Revenue Code, Section 302 of ERISA or Title IV of ERISA maintained, sponsored or contributed to, or for which there is an obligation to contribute to, by any Loan Party or any of its ERISA Affiliates at any time during the preceding six calendar years.

“Periodic Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“Permitted Disposition” means:

(a) Dispositions of obsolete, damaged, worn out, used or surplus property, whether now owned or hereafter acquired and Dispositions of property no longer used or useful in the conduct of the business of Parent and its Subsidiaries, each in the ordinary course of business;

(b) Dispositions of inventory and goods held for sale in the ordinary course of business and consistent with past practice, immaterial assets in the ordinary course of business and consistent with past practice and termination of leases and licenses in the ordinary course of business and consistent with past practice;

(c) Dispositions of as may be authorized by the Bankruptcy Court after notice and a hearing and with the consent of the Administrative Agent at the direction of the Required Lenders;

(d) [reserved];

(e) Dispositions (i) constituting Permitted Investments (other than pursuant to clause (d) thereof), (ii) permitted by Section 7.02(h), and (iii) constituting Liens permitted by Section 7.02(a);

(f) Dispositions of cash and Cash Equivalents consistent with the Budget (subject to Permitted Variances);

(g) Leases, subleases, service agreements, product sales, licenses or sublicenses, and terminations thereof (provided that any license of Intellectual Property is on a non-exclusive basis), in each case in the ordinary course of business and which do not materially interfere with the business of Parent and its Subsidiaries, taken as a whole; *provided* that the fair market value of assets subject to Dispositions shall not exceed \$250,000 in the aggregate;

(h) [reserved];

(i) Dispositions contemplated (i) by the Budget (subject to Permitted Variances) or (ii) the DIP Orders or the “first day” orders (solely to the extent permitted under the Budget (subject to Permitted Variances));

(j) [reserved];

(k) [reserved];

(l) [reserved];

(m) [reserved];

(n) [reserved];

(o) [reserved]; and

(p) [reserved].

“Permitted Holder” means (i) the Sponsor and (ii) any other Person that owns Equity Interests of the Parent or any of its direct or indirect parents on the Effective Date and any Affiliates of the foregoing.

“Permitted Indebtedness” means:

(a) the incurrence of Indebtedness pursuant to the Loan Documents or DIP Orders;

(b) Indebtedness of the Loan Parties under the (x) Prepetition First Lien Loan Documents and (y) Prepetition Second Lien Loan Documents;

(c) Indebtedness of Parent and its Subsidiaries in existence on the Effective Date and set forth on Schedule 7.02(b);

(d) [reserved];

(e) Indebtedness incurred by the Borrower or any Subsidiary constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker’s acceptances, warehouse receipts, or similar instruments issued or created in the ordinary course of business, including letters of credit in respect of workers’ compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement type obligations regarding workers’ compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance; *provided* that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 45 days following such drawing or incurrence;

(f) [reserved];

(g) Indebtedness of a Loan Party (except for Lexington Law) to the Borrower or another Loan Party (except Lexington Law) to the extent constituting a Permitted Investment or an Investment otherwise permitted by Section 7.02(a);

(h) [reserved];

(i) obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business and consistent with past practice;

(j) [reserved];

(k) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business and consistent with past practice; *provided* that such Indebtedness is extinguished within five Business Days of its incurrence;

(l) (i) any guarantee by the Borrower or a Subsidiary of Indebtedness of any Subsidiary so long as the incurrence of such Indebtedness incurred by such Subsidiary is permitted under Section 7.02(a), (b), (e) or (h) and (ii) any guarantee by a Subsidiary of Indebtedness of the Borrower or a Subsidiary;

(m) [reserved];

(n) customer deposits and advance payments received in the ordinary course of business and consistent with past practice from customers for goods purchased in the ordinary course of business;

(o) Indebtedness in respect of Cash Management Obligations, Cash Management Services and other Indebtedness in respect of netting services, automatic clearing house arrangements, employees' credit or purchase cards, overdraft protections and similar arrangements in each case incurred in the ordinary course of business;

(p) [reserved];

(q) Indebtedness of the Borrowers or any Subsidiary consisting of the financing of insurance premiums incurred in the ordinary course of business and consistent with the Budget (subject to Permitted Variances);

(r) [reserved];

(s) [reserved];

(t) Indebtedness representing deferred compensation to employees of the Borrowers or any Subsidiary incurred in the ordinary course of business consistent with the Budget (subject to Permitted Variances);

(u) [reserved];

(v) [reserved];

(w) Indebtedness incurred consistent with (i) the Budget (subject to Permitted Variances) or (ii) the DIP Orders or the “first day” orders (solely to the extent permitted under the Budget (subject to Permitted Variances)); and

(x) all premiums (if any), interest (including post-petition interest, capitalized interest or interest otherwise payable in kind), fees, expenses, charges and additional or contingent interest on obligations described in the foregoing clauses of this definition.

“Permitted Investments” means:

(a) any Investment in any Loan Party (other than Investments in Lexington Law unless such Investment is in the ordinary course of business, consistent with past practice and pursuant to the Lexington Law Operating Agreements);

(b) any Investment that exists at the time of the Effective Date, in Cash Equivalents;

(c) [reserved];

(d) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with a Permitted Disposition;

(e) any Investment existing on the Effective Date, set forth on Schedule 7.02(e), but not any increase in the amount thereof as set forth in such schedule or any modification of the terms thereof;

(f) any Investment acquired by the Borrower or any Subsidiary:

(i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business;

(ii) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Loan Parties or any such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment, accounts receivable or indorsements for collection or deposit (including any trade creditor or customer);

(iii) in satisfaction of judgments against other Persons;

(iv) as a result of a foreclosure by the Loan Parties or any Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or

(v) as a result of the settlement, compromise or resolution of litigation, arbitration or other disputes with Persons who are not Affiliates or Lexington Law;

(g) [reserved];

(h) guarantees of (i) Indebtedness of a Borrower or a Subsidiary permitted under Section 7.02(b), (ii) performance guarantees and Contingent Obligations incurred in the ordinary course of business and consistent with past practices and (iii) the creation of Liens on the assets of a Loan Party or Subsidiaries thereof in compliance with Section 7.02(a);

(i) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.02(j) (other than clause (iii) thereof);

(j) Investments consisting of (i) purchases or other acquisitions of inventory, supplies, material or equipment or (ii) the licensing or contribution of intellectual property pursuant to joint marketing arrangements in existence as of the Effective Date and listed on Schedule 7.02(e);

(k) Guarantees of operating leases or of other obligations that do not constitute Indebtedness, in each case, as set forth on Schedule 1.01(G);

(l) [reserved];

(m) [reserved];

(n) advances, loans or extensions of trade credit in the ordinary course of business by the Borrowers, Lexington Law or any Subsidiary;

(o) any leases, licenses, subleases or sublicenses granted to others in the ordinary course of business, consistent with past practices, which do not (i) interfere in any material respect with the business of the Loan Parties or (ii) secure any Indebtedness;

(p) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business consistent with the Budget (subject to Permitted Variances);

(q) Investments made in the ordinary course of business and consistent with the Budget (subject to Permitted Variances) in connection with obtaining, maintaining or renewing client contacts;

(r) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business;

(s) any Investment in any Loan Party (other than Lexington Law) in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business and consistent with past practices;

(t) [reserved];

(u) Investments consistent with (i) the Budget (subject to Permitted Variances) or (ii) the DIP Orders or the “first day” orders (solely to the extent permitted under the Budget (subject to Permitted Variances)); and

(v) [reserved].

“Permitted Liens” means, with respect to any person:

(a) pledges, deposits or security by such Person under workers’ compensation laws, unemployment insurance, employers’ health tax, and other social security laws or similar legislation or other insurance related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(b) Liens imposed by law, such as landlords’, carriers’, warehousemen’s, vendors’, materialmen’s, repairmen’s, mechanics’ Liens and other similar Liens, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate actions and other Liens arising out of or securing judgments or awards against such Person (including for payment of money not constituting an Event of Default under Section 9.01 (j)) with respect to which such Person shall then in good faith be proceeding with an appeal or other proceedings for review;

(c) Liens for Taxes not yet due and payable or which are being contested in good faith by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP or are otherwise stayed pursuant to the Bankruptcy Cases;

(d) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers’ acceptances issued, and completion guarantees provided for, in each case, issued pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice prior to the Effective Date;

(e) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning,

building codes or other restrictions (including minor defects and irregularities in title and similar encumbrances (and with respect to leasehold interests, mortgages, obligations, Liens and other encumbrances incurred, created, assumed or permitted to exist and arising by, through or under a landlord, ground lessor or owner of the leased property, with or without consent of the lessee)) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially impair their use in the operation of the business of such Person;

(f) [reserved];

(g) Liens existing on the Effective Date or pursuant to agreements in existence on the Effective Date, each as set forth on Schedule 1.01(D);

(h) [reserved];

(i) [reserved];

(j) [reserved];

(k) [reserved];

(l) [reserved];

(m) non-exclusive Intellectual Property Licenses in existence on the Effective Date and set forth on Schedule 1.01(E);

(n) Liens arising from Uniform Commercial Code (or equivalent statute) financing statement filings regarding operating leases or consignments entered into by the Borrowers or any Subsidiary in the ordinary course of business;

(o) Liens in favor of any Loan Party;

(p) any interest or title of a lessor, sublessor, licensor or sublicensor under any lease, sublease, license or sublicense (other than in respect of Intellectual Property) entered into in the ordinary course of business and consistent with past practices by the Borrowers, Lexington Law or any Subsidiary;

(q) deposits made or other security provided in the ordinary course of business to secure liability to insurance carriers;

(r) [reserved];

(s) Liens in favor of banking institutions arising as a matter of law or under general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(t) Permitted Prior Liens;

(u) Liens that are contractual rights of set-off (a) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts of the Loan Parties or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Loan Parties and the Subsidiaries or (c) relating to purchase orders and other agreements entered into with customers of the Borrowers or any Subsidiary in the ordinary course of business;

(v) Liens incurred (i) consistent with the Budget (subject to Permitted Variances) or (ii) in accordance with the DIP Orders or the “first day” orders (solely to the extent permitted under the DIP Orders);

(w) [reserved];

(x) [reserved];

(y) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(z) [reserved];

(aa) Liens arising solely from precautionary UCC financing statements or similar filings;

(bb) Liens securing obligations under: (i) the Loan Documents to secure the Obligations and the DIP Order and (ii) Indebtedness outstanding pursuant to clause (b) of the definition of “Permitted Indebtedness” so long as such Liens are subject to the terms of the Prepetition Intercreditor Agreement;

(cc) [reserved];

(dd) [reserved];

(ee) [reserved];

(ff) [reserved]; and

(gg) [reserved].

For purposes of this definition, the term “Indebtedness” shall be deemed to include interest on such Indebtedness.

“Permitted Prior Lien” means any of those existing Liens set forth on Schedule 7.02(a) that under applicable law, are senior to, and have not been subordinated to, the DIP Liens granted in favor of the Administrative Agent under the Loan Documents and the DIP Orders, but only to the extent that such Liens are valid, perfected, enforceable and non-avoidable Liens as of the Petition Date as permitted by section 546 of the Bankruptcy Code.

“Permitted Restricted Payments” means:

(a) [reserved];

(b) [reserved];

(c) [reserved];

(d) [reserved];

(e) [reserved];

(f) the declaration and payment of dividends or distributions by the Parent or any Subsidiary to the Parent in amounts required for the Parent (or any direct or indirect parent thereof), in each case without duplication:

a. to pay franchise, excise and similar taxes and other fees and expenses required to maintain their corporate or other legal existence in the ordinary course of business;

b. [reserved];

c. [reserved];

d. [reserved];

(g) [reserved]; and

(h) to the extent constituting Restricted Payments, payments consistent with (i) the Budget (subject to Permitted Variances) or (ii) the DIP Orders or the “first day” orders (solely to the extent permitted under the Budget (subject to Permitted Variances)).

“Permitted Variance” means, for (x) the period beginning on the Petition Date through and including the two week period ending on the second Friday following the Petition Date and (y) each Friday thereafter (each week commencing on the Friday of such week) but calculated on a rolling four (4) week basis to account for timing of payment variances, unless otherwise agreed to by the Administrative Agent (the applicable “Testing Period”): (a) any favorable disbursement variance, and (b) any unfavorable disbursement variance (other than disbursements for professional fees) of no more than 12.5% for actual aggregate receipts and actual aggregate disbursements as compared to the budgeted receipts and disbursements, respectively, set forth in the Budget with respect to the applicable Testing Period; provided that, notwithstanding the foregoing, professional fees, the Carve Out, and any bonus payments to executive officers of the Debtors and their subsidiaries shall be excluded from the determination of Permitted Variances.

“Person” means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

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

“Pledged Debt” means the indebtedness owned or acquired by a Grantor described in Schedule 1.01(B) hereto and all other indebtedness from time to time owned or acquired by a Grantor, the Promissory Notes and other Instruments evidencing any or all of such indebtedness, and all interest, cash, Instruments, Investment Property, financial assets, securities, Equity Interests, stock options and Commodity Contracts, notes, debentures, bonds, Promissory Notes or other evidences of indebtedness and all other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness.

“Pledged Interests” means all Promissory Notes evidencing the Pledged Debt and all certificates representing the Pledged Shares.

“Pledged Issuers” means, collectively, (a) the issuers of the shares of Equity Interests described in Schedule 1.01(C) hereto and (b) any other issuer of Equity Interests at any time and from time to time owned or acquired by a Grantor whose shares of Equity Interests are required to be pledged as DIP Collateral under this Agreement.

“Pledged Shares” means, (a) the shares of Equity Interests of the Pledged Issuers, whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, (b) the certificates representing such shares of Equity Interests, all options and other rights, contractual or otherwise, in respect thereof and all dividends, distributions, cash, Instruments, Investment Property, financial assets, securities, Equity Interests, stock options and Commodity Contracts, notes, debentures, bonds, Promissory Notes or other evidences of indebtedness and all other property (including, without limitation, any stock dividend and any distribution in connection with a stock split) from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests and (c) without affecting the obligations of any Grantor under any provision prohibiting such action under this Agreement or any other Loan Document, in the event of any consolidation or merger involving any Pledged Issuer and in which such Pledged Issuer is not the surviving entity, all Equity Interests of the successor entity formed by or resulting from such consolidation or merger.

“Post-Default Rate” means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.00%, or, if a rate of interest is not otherwise in effect, interest at the highest rate specified herein for any Loan then outstanding prior to an Event of Default plus 2.00%.

“Prepetition Agents” has the meaning set forth in the recitals hereto.

“Prepetition DIP Collateral” means collectively, Prepetition First Lien DIP Collateral and Prepetition Second Lien DIP Collateral.

“Prepetition Financing Agreements” has the meaning set forth in the recitals hereto.

“Prepetition First Lien Agent” has the meaning set forth in the recitals hereto.

“Prepetition First Lien DIP Collateral” means Collateral as defined in that certain Prepetition First Lien Financing Agreement.

“Prepetition First Lien Financing Agreement” has the meaning set forth in the recitals hereto.

“Prepetition First Lien Lenders” has the meaning set forth in the recitals hereto.

“Prepetition First Lien Loan Documents” has the meaning set forth in the recitals hereto.

“Prepetition First Lien Obligations” has the meaning set forth in the recitals hereto.

“Prepetition Intercreditor Agreement” has the meaning set forth in the recitals hereto.

“Prepetition Lenders” has the meaning set forth in the recitals hereto.

“Prepetition Obligations” has the meaning set forth in the recitals hereto.

“Prepetition Second Lien Agent” has the meaning set forth in the recitals hereto.

“Prepetition Second Lien DIP Collateral” means Collateral as defined in that certain Prepetition First Lien Financing Agreement.

“Prepetition Second Lien Financing Agreement” has the meaning set forth in the recitals hereto.

“Prepetition Second Lien Lenders” has the meaning set forth in the recitals hereto.

“Prepetition Second Lien Loan Documents” has the meaning set forth in the recitals hereto.

“Prepetition Second Lien Obligations” has the meaning set forth in the recitals hereto.

“Pro Rata Share” means, with respect to:

(a) a Lender's obligation to make the Loan and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender's Loan Commitment, by (ii) the Total Commitment, *provided* that if the Total Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's portion of the Loan and the denominator shall be the aggregate unpaid principal amount of the Loan; and

(b) all other matters (including, without limitation, the indemnification obligations arising under Section 10.05), the percentage obtained by dividing (i) the sum of such Lender's unpaid principal amount of such Lender's portion of the Loan, by (ii) the sum of the aggregate unpaid principal amount of the Loan.

“Prospect” means Prospect Capital Corporation.

“Qualified Equity Interests” means, with respect to any Person, all Equity Interests of such Person that are not Disqualified Equity Interests.

“Recipient” means any Agent or any Lender, as applicable.

“Reference Rate” means, for any period, the greatest of (a) 2.50% per annum, (b) the Federal Funds Rate plus 0.50% per annum, (c) the Adjusted Term SOFR (which rate shall be calculated based upon an Interest Period of 3 months and shall be determined on a daily basis) plus 1.00% per annum, and (d) the rate last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Reference Rate shall be effective from and including the date such change is publicly announced as being effective.

“Reference Rate Loan” means each portion of a Loan that bears interest at a rate determined by reference to the Reference Rate.

“Reference Rate Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“Register” has the meaning specified therefor in Section 12.07(f).

“Registered Intellectual Property” means intellectual property that is issued, registered, renewed or the subject of a pending application.

“Registered Loans” has the meaning specified therefor in Section 12.07(f).

“Regulation T”, “Regulation U” and “Regulation X” mean, respectively, Regulations T, U and X of the Board or any successor, as the same may be amended or supplemented from time to time.

“Related Fund” means, with respect to any Person, an Affiliate of such Person, or a fund or account managed by such Person or an Affiliate of such Person.

“Related Parties” means, with respect to any Person, such Person's Affiliates and the direct and indirect equityholders, partners, directors, officers, employees, agents, consultants, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in any

environmental media, including the indoor or outdoor air, soil, surface or ground water, sediments or property.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, of a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“Remedial Action” means any action (a) to correct, mitigate, or address any actual, alleged or threatened violation of or non-compliance with any Environmental Law or Environmental Permit, or (b) to clean up, remove, remediate, mitigate, abate, contain, treat, monitor, assess, evaluate, investigate or minimize any environmental condition or the actual, alleged or threatened presence, Release or threatened Release of any Hazardous Materials (including the performance of pre-remedial studies and investigations and post-remedial operation and maintenance activities).

“Remedies Notice Period” has the meaning specified therefor in Section 9.01.

“Replacement Lender” has the meaning specified therefor in Section 12.02(c).

“Reportable Event” means an event described in Section 4043 of ERISA (other than an event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated under such Section).

“Required Lenders” means Lenders whose Pro Rata Shares (calculated without duplication in accordance with both clauses (a) and (b) of the definition thereof) of the Total Commitments and the Loans aggregate more than 50.0% of the sum of the Total Commitments and the Loans; provided that in the event there are at least three (3) Lenders who are not Affiliates or Related Funds of each other, then Required Lenders shall include two (2) Lenders who are not Affiliates or Related Funds of each other.

“Required Prepayment Date” shall have the meaning assigned to such term in Section 2.05(g).

“Requirements of Law” means, with respect to any Person, collectively, the common law and any and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities), and the interpretation or administration thereof by, and other binding determinations, directives, requirements or requests of any Governmental Authority, in each case that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject (including the requirements of the Credit Repair Organizations Act or any similar foreign, federal or state law regulating the conduct of credit repair services organizations as now or hereinafter in effect).

“Reserve Percentage” means, on any day, for any Lender, the maximum percentage prescribed by the Board (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as “eurocurrency”).

liabilities”) of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

“Restricted Payment” means (a) the declaration or payment of any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, together with any payment or distribution pursuant to a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, (b) the making of any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Loan Party, now or hereafter outstanding, (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Equity Interests of any Loan Party, now or hereafter outstanding, (d) the return of any Equity Interests to any shareholders or other equity holders of any Loan Party or any of its Subsidiaries, or make any other distribution of property, assets, shares of Equity Interests, warrants, rights, options, obligations or securities thereto as such or (e) the payment of any management, consulting, monitoring or advisory fees or any other fees or expenses (including the reimbursement thereof by any Loan Party or any of its Subsidiaries) pursuant to any management, consulting, monitoring, advisory or other services agreement to any of the shareholders or other equityholders of any Loan Party or any of its Subsidiaries, or to any other or Affiliates of any Loan Party.

“Restructuring Support Agreement” means that certain Restructuring Support Agreement means that certain restructuring support agreement, dated as of June [●], 2023, by and among the Borrowers and the Prepetition Lenders.

“Retained Proceeds” means individually and collectively, (x) Extraordinary Receipts Proceeds and (y) Asset Sale Proceeds.

“Roll-Up DIP Facility” has the meaning assigned to such term in the recitals to this Agreement.

“Roll-Up Effective Time” means, as applicable, the moment in time (x) with respect to the (x) Interim Roll-Up Financing, immediately following the entry of the Interim DIP Order by the Bankruptcy Court approving the roll-up of the Prepetition First Lien Obligations as contemplated therein and herein and (y) Final Roll-Up Financing, immediately following the entry of the Final DIP Order by the Bankruptcy Court approving the roll-up of the Prepetition First Lien Obligations as contemplated therein and herein.

“Roll-Up Lender” means each Person listed on Schedule 2.02(d) (as updated by the Administrative Agent from time to time on or prior to the Roll-Up Effective Time in accordance with the terms of the Interim DIP Order or Final DIP Order, as applicable, as set forth in Section 2.02(d)) and any other Person that shall become a party to this Agreement as a Roll-Up Lender pursuant to an Assignment and Acceptance with respect to a Roll-Up Loan, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Acceptance.

“Roll-Up Loan Amount” means, with respect to a Roll-Up Lender, the percentage of the Roll-Up Loans allocated to such Roll-Up Lender as set forth opposite such Roll-Up Lender’s

name on Schedule 2.02(d) under the heading “Roll-Up Loan Amount” (as updated by the Administrative Agent from time to time on or prior to the Roll-Up Effective Time in accordance with the terms of the Interim DIP Order or Final DIP Order, as applicable, as set forth in Section 2.02(d)).

“Roll-Up Loans” has the meaning assigned thereto in Section 2.02(d).

“Sale and Leaseback Transaction” means, with respect to any Debtor, any arrangement, directly or indirectly, with any Person whereby any Debtor shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanctioned Country” means, at any time, a country or territory that is the subject or target of any Sanctions that broadly prohibit dealings with that country or territory (which, as of the Effective Date, include Crimea, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in OFAC's Specially Designated Nationals and Blocked Persons List, OFAC's Sectoral Sanctions Identification List, and any other Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty's Treasury of the United Kingdom, Germany, Canada, Australia, or other relevant sanctions authority, (b) a Person that resides in, is organized in or located in, or has a place of business in, a country or territory named on any list referred to in clause (a) of this definition or a country or territory that is designated as a “Non-Cooperative Jurisdiction” by the Financial Action Task Force on Money Laundering, or whose subscription funds are transferred from or through any such jurisdiction (each of the foregoing in this clause (b), a “Sanction Target”), or a Person that owns 50% or more of the Equity Interests of, or is otherwise controlled by, or is acting on behalf of, one or more Sanction Targets, (c) any Person with whom or with which a U.S. Person is prohibited from dealing under any of the Sanctions, or (d) any Person owned or controlled by any Person or Persons described in clause (a) or (b).

“Sanctions” means Requirements of Law concerning or relating to economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by OFAC, the U.S. Department of State, the European Union, His Majesty's Treasury of the United Kingdom, or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

“Secured Party” means any Agent and any Lender and each of their successors and assigns.

“Securities Act” means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

“Securitization” has the meaning specified therefor in Section 12.07(k).

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Deadline” has the meaning specified therefor in Section 2.07(a).

“SOFR Loan” means a Loan that bears a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Reference Rate”.

“SOFR Notice” means a written notice substantially in the form of Exhibit D.

“SOFR Option” has the meaning specified therefor in Section 2.07(a).

“Sponsor” means Prospect or any Controlled Investment Affiliate thereof.

“Standard & Poor's” means Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc. and any successor thereto.

“Subordinated Indebtedness” means Indebtedness of any Loan Party the terms of which (including, without limitation, payment terms, interest rates, covenants, remedies, defaults and other material terms) are satisfactory to the Collateral Agent and which has been expressly subordinated in right of payment to all Indebtedness of such Loan Party under the Loan Documents (a) by the execution and delivery of a subordination agreement, in form and substance reasonably satisfactory to the Collateral Agent, or (b) otherwise on terms and conditions reasonably satisfactory to the Collateral Agent.

“Subsidiary” means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the Board of Directors of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person. References to a Subsidiary shall mean a Subsidiary of the Debtors unless the context expressly provides otherwise.

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

“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; and

(b) for any calculation with respect to a Reference Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Reference Rate Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Reference Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Reference Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than 0.00%, then Term SOFR shall be deemed to be 0.00%.

“Term SOFR Adjustment” means a percentage equal to 0.26161% (26.161 basis points) per annum for three months.

“Term SOFR Administrator” means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR.

“Testing Period” has the meaning set forth in the definition of “Permitted Variances”.

“Total Commitment” means the sum of the amounts of the Lenders' Commitments.

“Trademark Licenses” means all written licenses, written contracts or other written agreements, naming any Grantor as licensor or licensee and providing for the grant of any right concerning any Trademark.

“Trademarks” means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade names, business names, d/b/a's, Internet domain names, trade styles, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, or acquired or used by any Grantor, all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all extensions or renewals thereof, together with all goodwill of the business symbolized by such marks.

“Transactions” means, collectively, (a) the execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party, (b) the commencement and filing of the Chapter 11 Cases, (c) the transactions contemplated by the Restructuring Support Agreement, and (d) the payment of fees and expenses in connection with the consummation of the Transactions.

“Transfer Agreement” means that certain Transfer Agreement, dated as of December 28, 2022, by and among Holdings, H.I.G. Progrexion, LLC, a Delaware limited liability company, and PGX Topco, LLC, a Delaware limited liability company.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Uniform Commercial Code” or “UCC” has the meaning specified therefor in Section 1.04.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001) as amended by the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. 109-177, March 9, 2006) and as the same may have been or may be further renewed, extended, amended, or replaced.

“VCOC Management Rights Agreement” has the meaning specified therefor in Section 5.01(d).

“Waivable Mandatory Prepayment” shall have the meaning assigned to such term in Section 2.05(g).

“WARN” has the meaning specified therefor in Section 6.01(p).

“Withholding Agent” means any Loan Party and the Administrative Agent.

SECTION 1.02 Terms Generally. The definitions of terms herein shall apply equally to 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”. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and (f) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations.

SECTION 1.03 Certain Matters of Construction. References in this Agreement to “determination” by any Agent include good faith estimates made by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent, any agreement entered into by any Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase “to the knowledge of any Loan Party” or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer's duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or

accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

#### SECTION 1.04 Accounting and Other Terms.

(a) Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP applied on a basis consistent with those used in preparing the Financial Statements. For purposes of determining compliance with any incurrence or expenditure tests set forth in Section 7.01 and Section 7.02, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents and Borrowers or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents and the Borrowers) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents and the Borrowers or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents and the Borrowers) as in effect on the date of such new incurrence or expenditure). Notwithstanding the foregoing, (i) with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with FASB ASC 842 on the definitions and covenants herein, GAAP as in effect on December 31, 2022 shall be applied and (ii) for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Debtors shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "Uniform Commercial Code" or the "UCC") and which are not otherwise defined herein shall have the same meanings herein as set forth therein; provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as the Agents and the Borrowers may otherwise agree in writing.

SECTION 1.05 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”; provided, however, that with respect to a computation of fees or interest payable to any Secured Party, such period shall in any event consist of at least one full day. Whenever any action or delivery to be taken or made under this Agreement or any other Loan Document shall be stated to be due on a day other than a Business Day, such action or delivery shall be deemed to be due on the next succeeding Business Day.

SECTION 1.06 Obligation to Make Payments in Dollars. All payments to be made by any Loan Party of principal, interest, fees and other Obligations under any Loan Document shall be made in Dollars in same day funds, and no obligation of any Loan Party to make any such payment shall be discharged or satisfied by any payment other than payments made in Dollars in same day funds.

SECTION 1.07 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Reference Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referenced in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Reference Rate, SOFR, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Reference Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Reference Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.08. UCC Terms. The following terms shall have the respective meanings provided for in the Uniform Commercial Code as in effect from time to time in the State of New York: “Accounts”, “Account Debtor”, “Cash Proceeds”, “Certificate of Title”, “Chattel Paper”, “Commercial Tort Claim”, “Commodity Account”, “Commodity Contracts”, “Deposit Account”, “Documents”, “Electronic Chattel Paper”, “Equipment”, “Fixtures”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment Property”, “Letter-of-Credit Rights”, “Noncash Proceeds”, “Payment Intangibles”, “Proceeds”, “Promissory Notes”, “Record”, “Security Account”, “Software”, “Supporting Obligations” and “Tangible Chattel Paper”.

## ARTICLE II

### THE LOANS

#### SECTION 2.01 Commitments.

(a) Interim DIP Loan. Subject to the terms and conditions of this Agreement, and pursuant to and solely in accordance with the Budget (subject to Permitted Variances), from time on and after the Effective Date and until the DIP Termination Date, each Lender, agrees to severally, and not jointly or jointly and severally, to make an Interim DIP Loan to and for the account of the Borrowers as provided herein, not to exceed the aggregate amount of such Lender's Interim DIP Loan Commitment (subject to any limitations contained within the Interim DIP Order). The Interim DIP Loan Commitment shall be reduced by the amount funded hereunder and such Commitment shall be terminated immediately after the funding of such Interim DIP Loan; provided, that all Interim DIP Loan Commitments shall be terminated on the day prior to the DIP Termination Date. Once repaid, no part of the Interim DIP Loans may be reborrowed.

(b) Final DIP Loans. Subject to the terms and conditions set forth herein, and pursuant to and solely in accordance with the Budget (subject to Permitted Variances), each Lender, agrees to severally, and not jointly or jointly and severally, from time to time on and after the Final DIP Closing Date, to make the Final DIP Loans to and for the account of the Borrowers as provided herein, in the aggregate amount of such Lender's Final DIP Loan Commitment (subject to any limitations contained within the Final DIP Order). The Final DIP Loan Commitment of each Lender shall be reduced by the amount funded hereunder and shall be terminated on the day prior to the DIP Termination Date. Once repaid, no part of the Final DIP Loans may be reborrowed.

(c) Disbursement of Loans. Pending use in accordance with the Budget (subject to Permitted Variances) and subject to Section 7.01(q), all DIP Proceeds (including any intra-company transfers of such DIP Proceeds) shall be deposited into a Cash Management Account subject to the DIP Liens pursuant to the DIP Order and invested at all times by the applicable Loan Party in accordance with the Debtors' "first day" pleadings governing cash management. Any such DIP Proceeds may only be used by the Borrowers in accordance with the Budget (subject to Permitted Variances).

SECTION 2.02 Making the New Money DIP Loans. (a) The Administrative Representative shall give the Administrative Agent prior notice in writing, in substantially the form of Exhibit C hereto or such other form approved by the Administrative Agent (a "Notice of Borrowing"), not later than 2:00 p.m. (New York City time) on the date which is three (3) Business Days prior to the date of the proposed New Money DIP Loan. Such Notice of Borrowing shall be irrevocable and shall specify (i) the principal amount of the proposed Loan, (ii) [reserved], (iii) whether the New Money DIP Loan is requested to be a Reference Rate Loan or a SOFR Loan and, in the case of a SOFR Loan, the initial Interest Period with respect thereto, (iv) the proposed borrowing date, which must be a Business Day, and, with respect to the Loan, must be the Effective Date and (v) the Borrowers' wiring instructions. The Administrative Agent and the Lenders may act without liability upon the basis of written or telecopied notice believed by the Administrative Agent in good faith to be from the Administrative Representative (or from any Authorized Officer

thereof designated in writing purportedly from the Administrative Representative to the Administrative Agent). The Administrative Agent and each Lender shall be entitled to rely conclusively on any Authorized Officer's authority to request a New Money DIP Loan on behalf of the Borrowers until the Administrative Agent receives written notice to the contrary. The Administrative Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing. Each Notice of Borrowing pursuant to this Section 2.02 shall be irrevocable and the Borrowers shall be bound to make a borrowing in accordance therewith.

(b) Except as otherwise provided in this Section 2.02(c), all New Money DIP Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares of the Total Commitment, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a New Money DIP Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a New Money DIP Loan requested hereunder, and each Lender shall be obligated to make the New Money DIP Loans required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

(c) Effective upon the occurrence of the Roll-Up Effective Time, without any further action by any party to this Agreement, the Bankruptcy Court or any other Person, to the extent set forth in the Interim DIP Order or Final DIP Order, as applicable, a portion of the Prepetition First Lien Obligations owing to the Prepetition First Lien Lenders at the Roll-Up Effective Time shall, on a pro rata basis as among each Roll-Up Lender in respect of its Roll-Up Loan Amount, be substituted and exchanged for (and deemed prepaid by) and deemed to be Loans hereunder held by (and owing by the Borrowers to) each Roll-Up Lender in an aggregate principal amount for such Roll-Up Lender equal to such Roll-Up Lender's Roll-Up Loan Amount (collectively, the "Roll-Up Loans"); provided that, for the avoidance of doubt, such Roll-Up Loans shall be secured by a perfected lien and security interest on all DIP Collateral unless otherwise provided for under the Loan Documents. Subject to the terms and conditions set forth herein and in the Interim DIP Order or Final DIP Order, as applicable, on the Roll-Up Effective Time, each Roll-Up Lender's Roll-Up Loans shall, from and after such date, be designated as such and administered hereunder. For the avoidance of doubt, each Roll-Up Lender acknowledges and agrees that by accepting the benefits of this Agreement, on the Roll-Up Effective Time, each Prepetition Lender rolling up Prepetition First Lien Obligations under this Agreement shall, to the extent such Roll-up Lender has not executed a signature page to this Agreement on the Effective Date, become a party to this Agreement as a Roll-Up Lender hereunder by executing and delivering a joinder to this Agreement. Amounts of Roll-Up Loans that are issued or deemed issued under this Section 2.02(d) that are repaid or prepaid may not be reborrowed. At the Roll-Up Effective Time, the Administrative Agent shall update Schedule 2.02(d) in accordance with the terms of the Interim DIP Order or Final DIP Order, as applicable, to reflect each Roll-Up Lender's Roll-Up Loan Amount (which Roll-Up Loan Amount shall be conclusive absent manifest error) and deliver such updated Schedule 2.02(d) to the Administrative Representative and the Roll-Up Lenders, whereupon such updated Schedule 2.02(d) shall constitute Schedule 2.02(d) for all purposes hereunder. Notwithstanding anything in this Agreement, including Schedule 2.02(d) as in effect from time to time, or any other Loan Document to the contrary, (a) the aggregate principal amount of each Roll-Up Lender's Roll-Up Loans shall not exceed such Roll-Up Lender's Roll-Up Loan

Amount and (b) the aggregate principal amount of all Roll-Up Loans of all Roll-Up Lenders shall not exceed \$[●] at any time. To the extent that there is a successful challenge to any Prepetition First Lien Obligations that are converted into the Roll-Up Loans, (i) the Roll-Up Loans shall be automatically unwound and deemed null and void in an equivalent amount and (ii) notwithstanding anything to the contrary in this Section 2.02(d), the Prepetition First Lien Obligations that previously were deemed “Roll-Up Loans” shall be reinstated and constitute outstanding Prepetition First Lien Obligations under the Prepetition First Lien Financing Agreement on the same terms and priorities as if the Roll-Up Loans never occurred. Notwithstanding anything to the contrary set forth herein, upon the Required Lenders’ consent the outstanding principal amount of Roll-Up Loans and any accrued and unpaid interest thereon may be subject to a different treatment, including pursuant to a plan of reorganization filed in the Chapter 11 Cases.

SECTION 2.03 Repayment of Loans; Evidence of Debt. (a) The Obligations, including the outstanding unpaid principal amount of the Loans, all accrued and unpaid interest thereon, and all other amounts owing to the Agents and/or the Lenders under this Agreement shall be due and payable on the DIP Termination Date.

(b) Each Lender shall maintain, in accordance with its usual practice, an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to Section 2.03(b) or Section 2.03(c) shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement and (ii) in the event of any conflict between the entries made in the accounts maintained pursuant to Section 2.03(b) and the accounts maintained pursuant to Section 2.03(c), the accounts maintained pursuant to Section 2.03(c) shall govern and control.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in the form of Exhibit E hereto. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.07) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.04 Interest.

(a) [Reserved].

(b) Loans. Subject to the terms of this Agreement, at the option of the Administrative Representative, the Loan or any portion thereof shall be either a Reference Rate Loan or a SOFR Loan. Each portion of the Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of such Loan is made until repaid, at a rate per annum equal to the Reference Rate plus the Applicable Margin, and each portion of the Loan that is a SOFR Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Loan until repaid, at a rate per annum equal to Adjusted Term SOFR for the Interest Period in effect for the Loan (or such portion thereof) plus the Applicable Margin.

(c) Default Interest. To the extent permitted by law and notwithstanding anything to the contrary in this Section, upon the occurrence and during the continuance of an Event of Default, the principal of, and all accrued and unpaid interest on, all Loans, fees, indemnities or any other Obligations of the Loan Parties under this Agreement and the other Loan Documents, shall automatically bear interest, from the date such Event of Default occurred until the date such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum equal at all times to the Post-Default Rate.

(d) Interest Payment. Interest on each New Money DIP Loan and Interim Roll-Up Loan shall be payable on each Interest Payment Date and at maturity (whether upon demand, by acceleration or otherwise). Interest at the Post-Default Rate shall be payable on demand. Each Borrower hereby authorizes the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account pursuant to Section 4.01 with the amount of any interest payment due hereunder. For the avoidance of doubt, interest on the Roll-Up Loans (other than the Interim Roll-Up Loans) shall be payable as set forth in clause (y) of the definition of Interest Payment Date for Roll-Up Loans.

(e) General. All interest shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed. For the avoidance of doubt, no date of payment shall be included in any computation.

#### SECTION 2.05 Prepayment of Loans.

(a) [Reserved].

(b) Optional Prepayment.

(i) [Reserved].

(ii) Loans. The Borrowers may, at any time and from time to time, by 3:00 p.m. (New York City time) at least five (5) Business Days' (or such shorter time as may be agreed by the Administrative Agent in its reasonable discretion) prior written notice to the Administrative Agent, prepay the principal of the Loans, in whole or in part. Each prepayment made pursuant to this Section 2.05(b)(ii) shall be accompanied by the payment of accrued interest to the date of such payment on the amount prepaid. Each such prepayment shall be applied against the remaining installments of principal due on the

Loans in the inverse order of maturity; provided that prepayments of the Loans shall be applied (i) first, to prepay the New Money DIP Loans and (ii) second, to prepay the Roll-Up Loans.

(iii) Termination of Agreement. The Borrowers may, upon at least five (5) Business Days' prior written notice by 3:00 p.m. (New York City time) to the Administrative Agent, terminate this Agreement by paying to the Administrative Agent, in cash, the Obligations, in full; provided that, such notice may provide that such termination is conditioned upon the consummation of a transaction, in which case, such notice may be revoked or extended by the Borrowers if any such transaction is not consummated prior to the date of termination of this Agreement in such notice. If the Administrative Representative has sent a notice of termination pursuant to this Section 2.05(b)(iii), then the Lenders' obligations to extend credit hereunder shall terminate and the Borrowers shall be obligated to repay the Obligations, in full, payable in connection with such termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice (except that such termination may be conditioned on the consummation of a transaction).

(c) Mandatory Prepayment.

(i) (A) Within three (3) Business Days of receipt of (i) any cash or cash equivalents cash collateralizing any letter of credit that are returned to a Loan Party for its own account and (ii) any cash or cash equivalents returned to a Loan Party from rent reserves or security deposits returned to a Loan Party upon the assignment of a lease or otherwise, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the amount so received by such Person.

(B) [Reserved.]

(ii) Within three (3) Business Days following any Disposition (excluding, for the avoidance of doubt, Dispositions which qualify as Permitted Dispositions under clauses (b) and (f) of the definition of Permitted Disposition) by any Loan Party or its Subsidiaries, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such Disposition; provided, the Net Cash Proceeds from Dispositions solely pursuant to clause (a) or (i) of the definition of Permitted Dispositions shall only be excluded to the extent the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall not exceed, for all such Dispositions, \$250,000 in the aggregate (the "Asset Sale Proceeds"). Nothing contained in this Section 2.05(c)(ii) shall permit any Loan Party or any of its Subsidiaries to make a Disposition of any property other than in accordance with Section 7.02(c)(ii).

(iii) Concurrently following receipt by any Loan Party or any of its Subsidiaries of Net Cash Proceeds from the issuance or incurrence of any Indebtedness (other than Permitted Indebtedness), the Borrowers shall prepay the outstanding amount of the Loans

in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith. The provisions of this Section 2.05(c)(iii) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(iv) Within three (3) Business Days following the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrowers shall prepay the outstanding principal of the Loans in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith;

(v) [reserved].

(d) Application of Payments. Each prepayment pursuant to subsections (c)(i), (c)(ii), (c)(iii), and (c)(iv) above shall be applied to the Loans until paid in full; provided that subject to entry of an Interim DIP Order or Final DIP Order, as applicable, approving the Roll-Up Loans, prepayments of the Loans pursuant to Section 2.05(c) shall be applied (i) first, to prepay the New Money DIP Loans and (ii) second, to prepay the Roll-Up Loans.

(i) Each such prepayment of the Loan pursuant to subsections (c)(i), (c)(ii), (c)(iii), and (c)(iv) above shall be applied against the remaining installments of principal of the Loan in the inverse order of maturity. Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, if the Administrative Agent has elected, or has been directed by the Collateral Agent or the Required Lenders, to apply payments in respect of any Obligations in accordance with Section 4.03(b), prepayments required under Section 2.05(c) shall be applied in the manner set forth in Section 4.03(b).

(ii) Notwithstanding the foregoing, to the extent any prepayment pursuant to subsections (c)(ii), and (c)(iv) above is prohibited or delayed by any applicable local Requirements of Law from being repatriated to the Borrowers or any Domestic Subsidiary including through the repayment of intercompany Indebtedness (each, a “Repatriation”; with “Repatriated” having a correlative meaning) the Borrowers hereby agree to cause the applicable Foreign Subsidiary to take promptly all actions reasonably required by such Requirements of Law to permit such Repatriation, or if the Repatriation of any such amount would reasonably be expected to have adverse Tax consequences (as determined by the Parent in good faith) with respect to any Debtors or their Subsidiaries (or any affiliated group of which any Debtor is a member), taking into account any foreign tax credit or benefit actually received in connection with such Repatriation, the portion of such prepayment amount so affected (such amount, the “Excluded Prepayment Amount”), will not be required to be applied to prepay Loans at the times provided in Section 2.05(c); provided, that if and to the extent any such Repatriation ceases to be prohibited or delayed by applicable local Requirements of Law at any time following the date on which the applicable mandatory prepayment pursuant to Section 2.05(c) was required to be made, the Loan Parties shall promptly Repatriate, or cause to be Repatriated, an amount equal to such portion of the Excluded Prepayment Amount, and the Loan Parties shall reasonably promptly pay such portion of the Excluded Prepayment Amount to the Lenders, which payment shall be applied in accordance with Section 2.05(d)(i).

(e) Interest and Fees. Any prepayment made pursuant to this Section 2.05 shall be accompanied by (x) two (2) Business Days prior written notice, by 3:00 p.m. to Administrative Agent and (y) (i) accrued interest on the principal amount being prepaid to the date of prepayment, (ii) any Funding Losses payable pursuant to Section 2.08, (iii) [reserved] and (iv) if such prepayment would reduce the amount of the outstanding Loans to zero, such prepayment shall be accompanied by the payment of all fees accrued to such date pursuant to Section 2.06.

(f) Cumulative Prepayments. Except as otherwise expressly provided in this Section 2.05, payments with respect to any subsection of this Section 2.05 are in addition to payments made or required to be made under any other subsection of this Section 2.05.

(g) Waivable Mandatory Prepayments. Anything contained herein to the contrary notwithstanding, in the event that the Borrowers are required to make any mandatory prepayment (a “Waivable Mandatory Prepayment”) of the Loans pursuant to Section 2.05(c), by 3:00 p.m. (New York City time) not less than two (2) Business Days prior to the date on which the Borrowers are required to make such Waivable Mandatory Prepayment (the “Required Prepayment Date”), the Administrative Representative shall notify the Administrative Agent in writing of the estimated amount of such prepayment, and the Administrative Agent will promptly thereafter notify each Lender of the amount of such Lender’s Pro Rata Share of such Waivable Mandatory Prepayment and such Lender’s option to refuse such amount. Each such Lender may exercise such option by giving written notice to the Administrative Representative and the Administrative Agent of its election to do so on or before 12:00 noon (New York City time) one Business Day prior to the Required Prepayment Date (it being understood that any Lender that does not notify the Administrative Representative and the Administrative Agent of its election to exercise such option on or before 12:00 noon (New York City time) one Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, the Borrowers shall pay to the Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) first, in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, to prepay the Loans of such Lenders (which prepayment shall be applied to prepay the outstanding principal amount of the Obligations in accordance with Section 2.05(d)), (ii) second, to prepay the Prepetition First Lien Obligations pursuant to the terms of the Prepetition First Lien Financing Agreement, (iii) third, to prepay the Prepetition Second Lien Obligations pursuant to the terms of the Prepetition Second Lien Financing Agreement and (iv) fourth, to the extent of any excess, and subject to the terms of this Agreement and the DIP Orders, to the Borrowers for working capital and general corporate purposes.

#### SECTION 2.06 Fees.

(a) Closing Fee. The Borrowers shall pay, in cash, to the Administrative Agent for the account of the Lenders, in accordance with their Pro Rata Shares of such Commitments, a non-refundable closing fee equal to 3.50% of (x) (i) the Interim DIP Loan Commitments and (ii) Interim Roll-Up Loans, which each shall be deemed fully earned, due and payable upon the entry of the Interim DIP Order (the “Initial DIP Closing Fee”) and (y) the Final DIP Loan Commitments, which shall be deemed fully earned, due and payable upon the entry of the Final DIP Order (the “Final DIP Closing Fee” and together with the Initial DIP Closing Fee, the “Closing Fee”). The Closing Fee shall be paid in cash on either the date the Interim DIP Order is entered or the date the Final

DIP Order is entered, as applicable, and, in each case, to the Administrative Agent (for distribution to the Lenders) from the proceeds of the Loan Parties' borrowings or roll-ups, as applicable, in connection with the Interim DIP Order and Final DIP Order, respectively, and at the option of each Lender may be taken as original issue discount.

(b) Agent Fee. The Borrowers shall pay to the Administrative Agent a nonrefundable agent fee (the "Agent Fee") of \$75,000, which shall be deemed fully earned upon the entry of the Interim DIP Order, and shall be paid in cash to the Administrative Agent from the proceeds of the initial borrowing of the Initial DIP Loan Commitments.

(c) [Reserved.]

(d) [Reserved.]

(e) [Reserved.]

(i) [Reserved.]

(ii) [Reserved.]

(iii) [Reserved.]

(f) [Reserved.].

(g) Audit and DIP Collateral Monitoring Fees. The Borrowers acknowledge that pursuant to Section 7.01(f), representatives of the Agents may visit any or all of the Loan Parties and/or conduct inspections, audits, physical counts, valuations, appraisals and/or examinations of any or all of the Loan Parties at any time and from time to time during normal business hours and so long as no Event of Default has occurred and is continuing, upon reasonable prior notice, in a manner so as to not unduly disrupt the business of such Loan Party. The Borrowers agree to pay (i) \$1,500 per day per examiner plus the examiner's reasonable and documented out-of-pocket costs and expenses incurred in connection with all such visits, inspections, audits, physical counts, valuations, appraisals and/or examinations and (ii) the reasonable and documented cost of all visits, inspections, audits, physical counts, valuations, appraisals and/or examinations conducted by a third party on behalf of the Agents; provided, that so long as no Event of Default shall have occurred and be continuing, the Borrowers shall not be obligated to reimburse the Agents for more than (A) one (1) audit, inspection, exam and/or audit during any calendar year, (B) one (1) physical count and/or examination during any calendar year, and (C) one (1) valuation and/or appraisal during any calendar year.

(h) [Reserved.]

#### SECTION 2.07 SOFR Option.

(a) The Borrowers may, at any time and from time to time, so long as no Default or Event of Default has occurred and is continuing, elect to have interest on all or a portion of the Loans be charged at a rate of interest based upon Adjusted Term SOFR (the "SOFR Option") by notifying the Administrative Agent prior to 11:00 a.m. (New York City time) at least 3 U.S.

Government Securities Business Days prior to (i) the proposed borrowing date of a Loan (as provided in Section 2.02), (ii) in the case of the conversion of a Reference Rate Loan to a SOFR Loan, the commencement of the proposed Interest Period or (iii) in the case of the continuation of a SOFR Loan as a SOFR Loan, the last day of the then current Interest Period (the “SOFR Deadline”). Notice of the Borrowers' election of the SOFR Option for a permitted portion of the Loans and an Interest Period pursuant to this Section 2.07(a) shall be made by delivery to the Administrative Agent of (A) a Notice of Borrowing (in the case of the initial making of a Loan) in accordance with Section 2.02 or (B) a SOFR Notice prior to the SOFR Deadline. Promptly upon its receipt of each such SOFR Notice, the Administrative Agent shall provide a copy thereof to each of the Lenders. Each SOFR Notice shall be irrevocable and binding on the Borrowers.

(b) Interest on SOFR Loans shall be payable in accordance with Section 2.04(d). On the last day of each applicable Interest Period, unless the Borrowers properly have exercised the SOFR Option with respect thereto, the interest rate applicable to such SOFR Loans automatically shall convert to the rate of interest then applicable to Reference Rate Loans of the same type hereunder. At any time that a Default or an Event of Default has occurred and is continuing, the Borrowers no longer shall have the option to request that any portion of the Loans bear interest at Adjusted Term SOFR and the Administrative Agent shall have the right to convert the interest rate on all outstanding SOFR Loans to the rate of interest then applicable to Reference Rate Loans of the same type hereunder on the last day of the then current Interest Period.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrowers (i) shall have not more than twelve (12) SOFR Loans in effect at any given time, and (ii) only may exercise the SOFR Option for SOFR Loans of at least \$500,000 and integral multiples of \$100,000 in excess thereof.

(d) The Borrowers may prepay SOFR Loans at any time; *provided, however*, that in the event that SOFR Loans are prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any mandatory prepayment pursuant to Section 2.05(c) or any application of payments or proceeds of DIP Collateral in accordance with Section 4.03 or Section 4.04 or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, the Borrowers shall indemnify, defend, and hold the Agents and the Lenders and their participants harmless against any and all Funding Losses in accordance with Section 2.08.

SECTION 2.08 Compensation for Losses. In the event of (a) the payment of any principal of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default) or (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrowers shall, within a reasonable, timely manner, compensate each Lender for any loss, cost and expense equal to the amount reasonably determined by such Lender to be attributable to such event, including any loss, cost or expense arising from the liquidation or deployment of funds. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Administrative Representative and shall be conclusive absent manifest error.

SECTION 2.09 Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any and all Taxes, except as required by Requirements of Law. If any applicable law (as determined in the good faith discretion of any Withholding Agent) requires the deduction or withholding of any Taxes from or in respect of any such payment, (i) the applicable Withholding Agent shall make such deduction or withholding, (ii) the applicable Withholding Agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and (iii) if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased by the amount (an “Additional Amount”) necessary such that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 2.09) the applicable Recipient receives the amount equal to the sum it would have received had no such deduction or withholding been made.

(b) In addition, each Loan Party shall pay to the relevant Governmental Authority in accordance with applicable law any Other Taxes, or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes by any Secured Party.

(c) The Loan Parties hereby jointly and severally indemnify and agree to hold each Secured Party harmless from and against Indemnified Taxes and Other Taxes (including, without limitation, Indemnified Taxes and Other Taxes imposed on any amounts payable under this Section 2.09) paid or payable by such Secured Party or required to be withheld or deducted from a payment to such Secured Party and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted by the relevant Governmental Authority. Such indemnification shall be paid within 10 days from the date on which any such Person makes written demand therefore specifying in reasonable detail the nature and amount of such Indemnified Taxes or Other Taxes. A certificate as to the amount of such payment or liability delivered to a Borrower by a Secured Party (with a copy to the Administrative Agent) or by the Administrative Agent on its own behalf or on behalf of another Secured Party shall be conclusive absent manifest error. Notwithstanding the foregoing, if the Parent reasonably believes that any such Indemnified Taxes were not correctly or legally asserted, then at the Administrative Representative’s request the Administrative Agent and/or each affected Lender will use reasonable efforts to cooperate with the applicable Loan Party in pursuing a refund of such Indemnified Taxes (which shall be repaid to the applicable Loan Party to the extent provided in Section 2.09(f)); *provided* that the Loan Parties shall pay all related expenses of the Administrative Agent and each such Lender and indemnify the Administrative Agent and each such Lender for any liabilities or other costs incurred by such party in connection with the pursuit of such refund. The preceding sentence shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information that it deems confidential) to the Loan Parties or any other Person.

(d) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Administrative Representative and the Administrative Agent, at the time or times reasonably requested by the Administrative Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Administrative Representative or the Administrative Agent as will permit such payments to be made without

withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Administrative Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Administrative Representative or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.09(d)(ii)(A), 2.09(d)(ii)(B) and 2.09(d)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Administrative Representative and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Representative or the Administrative Agent), duly completed and executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Lender that is not a U.S. Person (a "Foreign Lender") shall, to the extent it is legally entitled to do so, deliver to the Administrative Representative and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Representative or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, duly completed and executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) duly completed and executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit 2.09(d)-1 hereto to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax

Compliance Certificate”) and (y) duly completed and executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, duly completed and executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.09(d)-2 or Exhibit 2.09(d)-3, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.09(d)-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Administrative Representative and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Administrative Representative or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

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

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Administrative Agent in writing of its legal inability to do so.

(e) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the

extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.07(i) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.09 (including by the payment of Additional Amounts pursuant to this Section 2.09), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.09 with respect to the Taxes giving rise to such refund), net of reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) The obligations of the Loan Parties under this Section 2.09 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder until a date that is 30 days following the survival of the statute of limitations applicable to the relevant Tax.

(h) As soon as practicable after any payment of Taxes by the Loan Parties to a Governmental Authority pursuant to this Section 2.09, the Loan Parties shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

SECTION 2.10 Increased Costs and Reduced Return. (a) If any Secured Party shall have determined that any Change in Law shall (i) subject such Secured Party, or any Person controlling such Secured Party to any Tax, duty or other charge with respect to this Agreement or any Loan

made by such Agent or such Lender (other than Taxes, duties or other charges that are (A) Indemnified Taxes, (B) Taxes described in any of clauses (b) through (d) of the definition of Excluded Taxes, or (C) Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes), or (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement (without duplication of any Reserve Percentage adjustments made pursuant to the definition of "Adjusted Term SOFR") against any Loan or against assets of or held by, or deposits with or for the account of, or credit extended by, such Secured Party or any Person controlling such Secured Party or (iii) impose on such Secured Party or any Person controlling such Secured Party any other condition regarding this Agreement or any Loan, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Secured Party of making any Loan or agreeing to make any Loan, or to reduce any amount received or receivable by such Secured Party hereunder, then, (x) the Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans and (y) so long as such Secured Party or such other controlling Person is generally seeking compensation from its other customers that are subject to similar circumstances as the Loan Parties with respect to increased costs, then, upon demand by such Secured Party, the Borrowers shall pay to such Secured Party such additional amounts as will compensate such Secured Party for such increased costs or reductions in amount.

(b) If any Secured Party shall have reasonably determined (in good faith) that any Change in Law either (i) affects or would affect the amount of capital required or expected to be maintained by such Secured Party or any Person controlling such Secured Party, and such Secured Party determines that the amount of such capital is increased as a direct or indirect consequence of any Loans made or maintained, such Secured Party's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Secured Party's or such other controlling Person's capital to a level below that which such Secured Party or such controlling Person could have achieved but for such circumstances as a consequence of any Loans made or maintained or any agreement to make Loans or such Secured Party's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Secured Party's or such other controlling Person's policies with respect to capital adequacy), then, (x) the Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans and (y) so long as such Secured Party or such other controlling Person is generally seeking compensation from its other customers that are subject to similar circumstances as the Loan Parties with respect to increased costs, then, upon demand by such Secured Party, the Borrowers shall pay to such Secured Party from time to time such additional amounts as will compensate such Secured Party for such cost of maintaining such increased capital or such reduction in the rate of return on such Secured Party's or such other controlling Person's capital.

(c) All amounts payable under this Section 2.10 shall bear interest from the date that is 30 days after the date of written demand by any Secured Party until payment in full to such Secured Party at the Reference Rate. A reasonably detailed certificate of such Secured Party claiming compensation under this Section 2.10, specifying the event herein above described and the nature of such event shall be submitted by such Secured Party to the Administrative Representative, setting forth the additional amount due and an explanation of the calculation thereof, and such Secured Party's reasons for invoking the provisions of this Section 2.10, and shall be final and conclusive absent manifest error.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.10 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.10 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender notifies the Administrative Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Loan Parties under this Section 2.10 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

SECTION 2.11 Inability to Determine Rates. Subject to Section 2.13, if, on or prior to the first day of any Interest Period for any SOFR Loan:

(a) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Adjusted Term SOFR” cannot be determined pursuant to the definition thereof, or

(b) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent, the Administrative Agent will promptly so notify the Administrative Representative and each Lender. Upon notice thereof by the Administrative Agent to the Administrative Representative, any obligation of the Lenders to make SOFR Loans and any right of the Borrowers to continue SOFR Loans or to convert Reference Rate Loans to SOFR Loans, shall be suspended (to the extent of the affected SOFR Loans or affected Interest Periods) until the Administrative Agent (with respect to clause (b), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Administrative Representative may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or affected Interest Periods) or, failing that, the Administrative Representative will be deemed to have converted any such request into a request for a borrowing of or conversion to Reference Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Reference Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrowers shall also pay any additional amounts required pursuant to Section 2.08. Subject to Section 2.13, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Adjusted Term SOFR” cannot be determined pursuant to the definition thereof on any given day, the interest rate on Reference Rate Loans shall be determined by the Administrative Agent without reference to clause (c) of the definition of “Reference Rate” until the Administrative Agent revokes such determination.

SECTION 2.12 Illegality. If any Lender determines that any law has made it unlawful or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable

lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, then, upon notice thereof by such Lender to the Administrative Representative (through the Administrative Agent), (a) any obligation of the Lenders to make SOFR Loans, and any right of the Administrative Representative to continue SOFR Loans or to convert Reference Rate Loans to SOFR Loans, shall be suspended, and (b) the interest rate on which Reference Rate Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of “Reference Rate”, in each case until each affected Lender notifies the Administrative Agent and the Administrative Representative that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Administrative Representative shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans to Reference Rate Loans (the interest rate on which Reference Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of “Reference Rate”), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day, and (ii) if necessary to avoid such illegality, the Administrative Agent shall during the period of such suspension compute the Reference Rate without reference to clause (c) of the definition of “Reference Rate,” in each case until the Administrative Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR. Upon any such prepayment or conversion, the Borrowers shall also pay any additional amounts required pursuant to Section 2.08.

#### SECTION 2.13 Benchmark Replacement Setting.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Administrative Representative may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Administrative Representative so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.13(a) will occur prior to the applicable Benchmark Transition Start Date.

(b) Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Administrative Representative and the Lenders of (i) the implementation

of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes. The Administrative Agent will promptly notify the Administrative Representative of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.13(d) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.13, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.13.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not, or will not, be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not, or will not, be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Administrative Representative’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Administrative Representative may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Administrative Representative will be deemed to have converted any such request into a request for a borrowing of or conversion to Reference Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Reference Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Reference Rate.

### ARTICLE III

**[INTENTIONALLY OMITTED]**

## ARTICLE IV

**APPLICATION OF PAYMENTS; DEFAULTING LENDERS;  
JOINT AND SEVERAL LIABILITY OF BORROWERS**

SECTION 4.01 Payments; Computations and Statements. (a) The Administrative Representative (on behalf of the Borrowers) will make each payment under this Agreement not later than 2:00 p.m. (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Accounts. All payments received by the Administrative Agent after 2:00 p.m. (New York City time) on any Business Day may in the Administrative Agent's sole discretion, be deemed received. All payments shall be made by the Borrowers without set-off, counterclaim, recoupment, deduction or other defense (other than the defense of payment in full) to the Agents and the Lenders. Except as provided in Section 2.02, after receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement. Subject to the terms of the DIP Order, the Lenders and the Borrowers hereby authorize the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account of the Borrowers with any amount due and payable by the Borrowers under any Loan Document. Each of the Lenders and the Borrowers agrees that the Administrative Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 5.02 have been satisfied. Any amount charged to the Loan Account of the Borrowers shall be deemed Obligations. The Lenders and the Borrowers confirm that any charges which the Administrative Agent may so make to the Loan Account of the Borrowers as herein provided will be made as an accommodation to the Borrowers and solely at the Administrative Agent's discretion, provided that the Administrative Agent shall from time to time upon the request of the Collateral Agent, charge the Loan Account of the Borrowers with any amount due and payable under any Loan Document. Whenever any payment to be made under any such Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

(b) The Administrative Agent shall provide the Administrative Representative, promptly after the end of each calendar month, a summary statement (in the form from time to time used by the Administrative Agent) of the opening and closing daily balances in the Loan Account of the Borrowers during such month, the amounts and dates of all Loans made to the Borrowers during such month, the amounts and dates of all payments on account of the Loans to the Borrowers during such month and the Loans to which such payments were applied, the amount of interest accrued on the Loans to the Borrowers during such month and the amount and nature of any charges to the Loan Account made during such month on account of fees, commissions, expenses and other Obligations. All entries on any such statement shall be presumed to be correct and, 30 days after the same is sent, shall be final and conclusive absent manifest error.

SECTION 4.02 Sharing of Payments. If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; *provided, however*, that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid by the purchasing Lender in respect of the total amount so recovered and (b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender and any payment of an amendment, consent or waiver fee to consenting Lenders pursuant to an effective amendment, consent or waiver with respect to this Agreement), or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrowers agree that any Lender so purchasing a participation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all of its rights (including the Lender's right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrowers in the amount of such participation.

SECTION 4.03 Apportionment of Payments. Subject to Section 2.02 hereof:

(a) All payments of principal and interest in respect of outstanding Loans, all payments of fees (other than the fees set forth in Section 2.06 hereof) and all other payments in respect of any other Obligations, shall be allocated by the Administrative Agent among such of the Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Loans, as designated by the Person making payment when the payment is made.

(b) After the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and upon the direction of the Collateral Agent or the Required Lenders shall, apply all payments in respect of any Obligations, including without limitation, all proceeds of the DIP Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Agents until paid in full; (ii) second, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Lenders until paid in full; (iii) third, ratably to pay interest then due and payable in respect of the New Money DIP Loans until paid in full; (iv) fourth, ratably to pay principal of the New Money DIP Loans until paid in full; (v) fifth, ratably to pay interest then due and payable in respect of the Roll-Up Loans until paid in full; (vi) sixth, ratably to pay principal of the Roll-Up Loans until paid in full; (vii) seventh, ratably to pay the Obligations then due and payable to the Lenders until paid in full; (viii) eighth, to the ratable payment of all other Obligations then due and payable; and (ix) ninth, to Borrowers or such other Person entitled thereto under applicable law (as

determined by the Agents at the direction of the Required Lenders or as directed by a court of competent jurisdiction).

(c) [reserved].

(d) For purposes of Section 4.03(b), “paid in full” means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(e) In the event of a direct conflict between the priority provisions of this Section 4.03 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of Section 4.03 shall control and govern.

SECTION 4.04 Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 12.02.

(b) The Administrative Agent shall not be obligated to transfer to such Defaulting Lender any payments made by any Borrower to the Administrative Agent for such Defaulting Lender's benefit, and, in the absence of such transfer to such Defaulting Lender, the Administrative Agent shall transfer any such payments to each other non-Defaulting Lender ratably in accordance with their Pro Rata Shares (without giving effect to the Pro Rata Shares of such Defaulting Lender) (but only to the extent that such Defaulting Lender's Loans were funded by the other Lenders) or, if so directed by the Administrative Representative and if no Default or Event of Default has occurred and is continuing (and to the extent such Defaulting Lender's Loans were not funded by the other Lenders), retain the same to be re-advanced to the Borrowers as if such Defaulting Lender had made such Loans to the Borrowers. Subject to the foregoing, the Administrative Agent may hold and, in its discretion, re-lend to the Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by the Administrative Agent for the account of such Defaulting Lender.

(c) Any such failure to fund by any Defaulting Lender shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrowers to replace the Defaulting Lender with one or more substitute Lenders, and the Defaulting Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Defaulting Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Defaulting Lender shall execute and deliver an Assignment and Acceptance, subject only to the Defaulting Lender

being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Defaulting Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Defaulting Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Defaulting Lender shall be made in accordance with the terms of Section 12.07.

(d) The operation of this Section shall not be construed to increase or otherwise affect the Commitments of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to the Administrative Agent or to the Lenders other than such Defaulting Lender.

(e) This Section shall remain effective with respect to such Lender until either (i) the Obligations under this Agreement shall have been declared or shall have become immediately due and payable or (ii) the non-Defaulting Lenders, the Agents, and the Borrowers shall have waived such Defaulting Lender's default in writing, and the Defaulting Lender makes its Pro Rata Share of the applicable defaulted Loans and pays to the Agents all amounts owing by such Defaulting Lender in respect thereof; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while such Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender's having been a Defaulting Lender.

(f) Defaulting Lender Cure. If the Administrative Representative and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Pro Rata Share, whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

#### SECTION 4.05 Administrative Representative; Joint and Several Liability of the Borrowers.

(a) Each Loan Party party hereto hereby irrevocably appoints the Parent as the borrowing agent and attorney-in-fact for the Borrowers (the "Administrative Representative") which appointment shall remain in full force and effect unless and until the Agents shall have received prior written notice signed by all of the Borrowers that such appointment has been revoked and that another Loan Party has been appointed Administrative Representative. Each Borrower hereby irrevocably appoints and authorizes the Administrative Representative (i) to

provide to the Agents and receive from the Agents all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) to take such action as the Administrative Representative deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and DIP Collateral of the Borrowers in a combined fashion, as more fully set forth herein, is done solely as an accommodation to the Borrowers in order to utilize the collective borrowing powers of the Borrowers in the most efficient and economical manner and at their request, and that neither the Agents nor the Lenders shall incur liability to the Borrowers as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the DIP Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group.

(b) Each Borrower hereby accepts joint and several liability hereunder and under the other Loan Documents for the Obligations in consideration of the financial accommodations to be provided by the Agents and the Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations. Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 4.05), it being the intention of the parties hereto that all of the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them. If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation. Subject to the terms and conditions hereof, the Obligations of each of the Borrowers under the provisions of this Section 4.05 constitute the absolute and unconditional, full recourse Obligations of each of the Borrowers, enforceable against each such Person to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement, the other Loan Documents or any other circumstances whatsoever.

(c) The provisions of this Section 4.05 are made for the benefit of the Agents, the Lenders and their successors and permitted assigns, and may be enforced by them from time to time against any or all of the Borrowers as often as occasion therefor may arise and without requirement on the part of the Agents, the Lenders or such successors or permitted assigns first to marshal any of its or their claims or to exercise any of its or their rights against any of the other Borrowers or to exhaust any remedies available to it or them against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 4.05 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied.

(d) Each of the Borrowers hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Borrowers with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agents or the Lenders with respect to any of the Obligations or any DIP Collateral, until such time as all of

the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Agents or the Lenders hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations.

SECTION 4.06 No Discharge; Survival of Claims. Until indefeasible payment in full (other than Contingent Indemnity Obligations not yet due and payable) in cash of the Loans and all other Obligations, each of the Borrower and the Guarantors agrees that (a) the Obligations hereunder shall not be discharged by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case (and each of the Borrower and the Guarantors, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (b) the DIP Credit Facility Super-Priority Claims and the DIP Liens granted to the Collateral Agent pursuant to the DIP Orders and described in Section 4.10 shall not be affected in any manner by the entry of an order confirming a plan of reorganization or liquidation in any Chapter 11 Case, and such claims and Liens shall be paid in full in cash by any such plan in each case, unless otherwise agreed by the Administrative Agent (at the direction of the Required Lenders), including with respect to the assumption of the underlying Obligations by any purchaser of the Debtors' assets.

SECTION 4.07 Super Priority Nature of Obligations and Lenders' DIP Liens. Subject in all respects to the Carve-Out, the priority of the Secured Parties' DIP Liens on the DIP Collateral owned by the Loan Parties shall be set forth in the DIP Orders.

(a) Subject in all respects to the Carve-Out, all Obligations shall constitute DIP Credit Facility Super-Priority Claims.

(b) Subject in all respects to the Carve-Out, upon entry of the Interim DIP Order, the DIP Liens granted to the Collateral Agent for the benefit of the Lenders on the DIP Collateral shall be valid and automatically perfected and with the priority as set forth in the DIP Orders.

(c) Subject in all respects to the Carve-Out, except as set forth herein or the DIP Orders, the Debtors shall not seek approval of any other claim having a priority superior or pari passu to that granted to the Collateral Agent and Lenders by the DIP Orders while any Obligations remain outstanding.

SECTION 4.08 Release. The Borrower and each of the Guarantors hereby acknowledges effective upon entry of the Interim DIP Order, and subject to the terms thereof and of the Final DIP Order, that the Borrower, the Guarantors and any of their Subsidiaries have no defense, counterclaim, offset, recoupment, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Borrower's, the Guarantors' or any Subsidiaries' liability to repay the Administrative Agent or any Lender as provided in this Agreement or to seek affirmative relief or damages of any kind or nature from the Administrative Agent or any Lender in their respective capacities as such. Upon entry of the Interim DIP Order, the Borrower and the Guarantors, each in their own right and on behalf of their bankruptcy estates, and on behalf of all their successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them, hereby fully, finally and forever release and

discharge the Administrative Agent and the Lenders in their respective capacities as such and all of the Administrative Agent's and the Lenders' respective officers, directors, servants, agents, advisors, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them of and from any and all actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Interim DIP Order, whether in law, equity or otherwise (including, without limitation, any so-called "lender liability" or equitable subordination or recharacterization claims or defenses and those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional costs, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to this Agreement, the DIP Orders and the transactions (including, for avoidance of doubt, the Transactions) contemplated hereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing. Notwithstanding anything herein to the contrary, the Borrower and Guarantors shall not have any obligation to indemnify or hold harmless any Administrative Agent or any Lender hereunder with respect to liabilities to the extent they result from gross negligence or willful misconduct of such Administrative Agent or Lender, as applicable, as finally determined by a court of competent jurisdiction.

#### SECTION 4.09 Waiver of Certain Rights.

(a) Subject in all respects to the Carve-Out, on and after the Effective Date, and on behalf of themselves and their estates, and for so long as any Obligations shall be outstanding, the Borrowers and the other Loan Parties hereby irrevocably waive any right, pursuant to sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the DIP Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations.

(b) Subject in all respects to the Carve-Out, upon entry of the Final DIP Order, in no event shall the Agents, the Lenders, the Prepetition Agents or the Prepetition Lenders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition DIP Collateral, as applicable, and all proceeds thereof shall be received and applied pursuant to the DIP Orders, the Loan Documents and the Prepetition Loan Documents, as applicable, notwithstanding any other agreement or provision to the contrary.

(c) Subject in all respects to the Carve-Out, upon entry of the Final DIP Order, the Debtors (on behalf of themselves and their estates) shall irrevocably waive, and shall be prohibited from asserting in the Chapter 11 Cases or any successor cases, (i) any surcharge claim under sections 105(a) or 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders upon the DIP Collateral or the Prepetition DIP Collateral, and (ii) the Agents, the Lenders, the Prepetition Agents and the Prepetition Lenders, shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities

of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Agents, the Lenders, the Prepetition Agents and the Prepetition Lenders with respect to proceeds, product, offspring or profits of any of the Prepetition DIP Collateral or DIP Collateral.

SECTION 4.10 Grant of Security; Security for Obligations; Debtors Remain Liable. Pursuant to the DIP Orders, and subject in all respects to the Carve-Out, as collateral security for the payment, performance and observance of all of the Obligations, each Grantor hereby pledges and collaterally assigns to the Collateral Agent (and its agents and designees), and grants to the Collateral Agent (and its agents and designees), for the benefit of the Secured Parties, a continuing security interest in, all personal property and Fixtures of such Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind and description, tangible or intangible, including, without limitation, the following (all being collectively referred to herein as “DIP Collateral”):

- (i) all Accounts;
- (ii) all Chattel Paper (whether tangible or electronic);
- (iii) all Commercial Tort Claims, including, without limitation, the Commercial Tort Claims described in Schedule 4.10 hereto;
- (iv) all securities accounts, all deposit accounts, all cash, and all other property from time to time deposited therein or otherwise credited thereto and the monies and property in the possession or under the control of any Agent or any Lender or any affiliate, representative, agent or participant of any Agent or any Lender;
- (v) all Documents;
- (vi) all General Intangibles (including, without limitation, all Payment Intangibles, Intellectual Property and Licenses);
- (vii) all Goods, including, without limitation, all Equipment, Fixtures and Inventory;
- (viii) all Instruments (including, without limitation, Promissory Notes);
- (ix) all Investment Property;
- (x) all Letter-of-Credit Rights;
- (xi) all Pledged Interests;
- (xii) all Supporting Obligations;
- (xiii) all other tangible and intangible personal property of such Grantor (whether or not subject to the Code), including, without limitation, all bank and other accounts and

all cash and all investments therein, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of such Grantor described in the preceding clauses of this Section 4.10 hereof (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by such Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including, without limitation, all tapes, disks, cards, Software, data and computer programs in the possession or under the control of such Grantor or any other Person from time to time acting for such Grantor that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 4.10 hereof or are otherwise necessary or helpful in the collection or realization thereof;

(xiv) all present and future claims or causes of action, including avoidance actions or proceeds thereof under, inter alia, Sections 542, 544, 545, 547, 548, 549, 550, 552 and 553 of the Bankruptcy Code, subject to entry of the Final DIP Order; and

(xv) all proceeds, products and accessions with respect to any of the foregoing DIP Collateral.

In each case, howsoever such Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

(a) Notwithstanding anything herein to the contrary, and subject to the terms of the DIP Orders, in no event shall the DIP Collateral include (nor shall any defined term used therein include), and no Debtor shall be deemed to have granted a security interest in, any of such Debtor's rights or interests in any Excluded Assets.

(b) The DIP Orders grant DIP Liens with respect to the DIP Collateral, and the DIP Collateral is collateral security for, the prompt payment in full when due and owing, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of all Obligations. It is the intention of the parties that if the Collateral Agent shall fail to have a perfected Lien in any particular property or assets of any Loan Party for any reason whatsoever, the provisions of this Agreement and/or the other Loan Documents, together with the DIP Orders, all financing statements and other public financing relating to Liens filed or recorded by the Agents against the Loan Parties and, with respect to all Loan Parties, the DIP Orders and any other order entered by the Bankruptcy Court to secure the Obligations, would be sufficient to create a perfected first priority DIP Lien in any property or assets that such Loan Party may receive upon the sale, lease, license, exchange, transfer or disposition of such particular property or assets, then all such "proceeds" of such particular property or assets shall be included in the DIP Collateral.

(c) Anything contained herein to the contrary notwithstanding, (a) each Debtor shall remain liable under any contracts and agreements included in the DIP Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by an Agent of any of its rights hereunder or under any other Loan Document shall not release any Debtor from any of its duties or obligations under the contracts and agreements included in the DIP Collateral unless the applicable Agent has expressly in writing assumed such duties and obligations and released the Debtors from such duties

and obligations, and (c) the Agents shall not have any obligation or liability under any contracts, licenses, and agreements included in the DIP Collateral by reason of this Agreement, nor shall the Agents be obligated to perform any of the obligations or duties of any Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder unless the such Agent has expressly in writing assumed such duties and obligations and released the Debtors from such duties and obligations.

## ARTICLE V

### CONDITIONS TO LOANS

SECTION 5.01 Conditions Precedent to the Closing of the DIP Facility. This Agreement shall become effective as of the Business Day (the “Effective Date”) when each of the following conditions precedent shall have been satisfied (or waived by the Administrative Agent at the direction of the Required Lenders):

(a) Payment of Fees, Etc. The Borrowers shall have paid in cash on or before the Effective Date all fees (including the Agent Fee) costs and expenses then due and payable pursuant to this Agreement, to the extent invoiced at least two (2) Business Days prior to the Effective Date.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties contained in Article VI and in each other Loan Document delivered to any Secured Party pursuant hereto or thereto on or prior to the Effective Date are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality of “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of the Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to materiality of “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(c) Legality. The making of the New Money DIP Loans shall not contravene any law, rule or regulation applicable to any Secured Party.

(d) Delivery of Documents. The Agents shall have received on or before the Effective Date the following, each in form and substance reasonably satisfactory to the Collateral Agent and Lenders, unless indicated otherwise, dated the Effective Date and, if applicable, duly executed by the Persons party thereto:

(i) at least one (1) Business Day prior to the Effective Date, all documentation and other information required by regulatory authorities under applicable “know your

customer” and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act, and the Administrative Agent shall have completed, with results satisfactory to the Administrative Agent, its review procedures regarding the respective documentation and information, on or prior to the Effective Date;

(ii) [reserved];

(iii) the management rights letter, dated as of the date hereof, among the Loan Parties and the Agents, as amended, amended and restated, supplemented or otherwise modified from time to time (the “VCOC Management Rights Agreement”);

(iv) a certificate of an Authorized Officer of each Loan Party, certifying (A) as to copies of the Governing Documents of such Loan Party from its jurisdiction of organization, together with all amendments thereto (including, without limitation, a true and complete copy of the charter, certificate of formation, certificate of limited partnership (or equivalent) of each Loan Party certified as of a recent date by an appropriate official of the jurisdiction of organization of such Loan Party), (B) as to a copy of the resolutions or written consents of such Loan Party authorizing (1) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (2) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith and (C) the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers

(v) [reserved];

(vi) [reserved];

(vii) a certificate of an Authorized Officer of the Administrative Representative and Lexington Law certifying as to the matters set forth in Section 5.01(b); and

(viii) duly executed copies of (1) this Agreement by each Debtor, each Lender and each Agent and (2) each of the other Loan Documents by each Lender party thereto, each Debtor party thereto, each Agent party thereto, and each of the other parties thereto.

(e) [Reserved.]

(f) Closing Fee. The Initial DIP Closing Fee shall have been paid to the Administrative Agent, for the benefit of the Lenders, in full in cash (or taken as original issue discount, pursuant to the terms hereof), from the first proceeds of the Interim DIP Loan.

(g) Approvals. Other than as a result of or in connection with the Chapter 11 Cases, all governmental and third party consents and approvals reasonably necessary to be obtained by the Debtors in connection with the DIP Facility, if any, shall have been obtained (without the

imposition of any conditions that are not reasonably acceptable to the Administrative Agent) or permitted pursuant to the DIP Orders, as applicable, and shall remain in effect.

(h) Budget. The Administrative Agent and Lenders shall have received the Initial Budget in form and substance reasonably satisfactory to the Administrative Agent at the direction of Required Lenders.

(i) [Reserved].

(j) Security Interests. Subject to the entry of the Interim DIP Order and the terms therein, the Administrative Agent, for the benefit of the Lenders, shall have a valid and perfected DIP Lien on and security interest in the DIP Collateral of the Debtors on the basis and with the priority set forth in the DIP Orders.

(k) Litigation. Other than the Chapter 11 Cases, as stayed upon the commencement of the Chapter 11 Cases, or as otherwise disclosed in writing to the Administrative Agent prior to the Effective Date, there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in writing in any court or before any arbitrator or governmental authority that (i) would reasonably be expected to result in a Material Adverse Effect or (ii) restrains, prevents or purports to materially adversely affect the legality, validity or enforceability of the DIP Facility or the consummation of the transactions contemplated thereby.

(l) First Day Motions. The Administrative Agent shall have received, all first day motions, including those related to the DIP Facility and any motion to sell any of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code (the "Sale Motion"), filed by the Debtors and related orders entered by the Bankruptcy Court in the Chapter 11 Cases, including, without limitation, with respect to the approval the DIP Facility, on an interim basis, and the bid procedures (the "Bid Procedures") accompanying the Sale Motion, shall each be in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders;

(m) Asset Purchase Agreement. A stalking horse credit bid asset purchase agreement for the sale of all or substantially all of the assets of the Debtors (including Lexington Law) (the "Asset Purchase Agreement") to an acquisition entity formed by the Lenders shall be in a form and substance acceptable to the Administrative Agent and the Lenders in their sole discretion.

(n) Interim DIP Order. The Bankruptcy Court shall have entered the Interim DIP Order within four (4) Business Days following the Petition Date, which Interim DIP Order shall include, without limitation, copies of the DIP Facility and the Initial Budget as exhibits thereto, entered on notice to such parties as may be satisfactory to the Administrative Agent at the direction of the Required Lenders, (i) authorizing and approving the DIP Facility and the transactions contemplated thereby, including, without limitation, the granting of the superpriority claim status, security interests and priming liens, and the payment of all fees, referred to herein and therein; (ii) authorizing the lifting or modification of the Automatic Stay to permit the Borrowers and the Guarantors to perform their obligations, and the Lenders to exercise their rights and remedies, with respect to the DIP Facility; (iii) authorizing the use of cash collateral and providing for adequate protection in favor of the Prepetition Agents and Prepetition Lenders, as and to the extent provided herein and therein; and (iv) reflecting such other terms and conditions that are mutually satisfactory

to the Administrative Agent (at the direction of the Required Lenders) and the Debtors, in their respective discretion in each case, which Interim DIP Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent (at the direction of the Required Lenders).

(o) Restraints. Other than the DIP Orders, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the DIP Facility or the exercise by the Administrative Agent of its rights as a secured party with respect to the DIP Collateral.

SECTION 5.02 Conditions Precedent to Extensions of Loans. The Loan Parties agree that, in addition to all other terms, conditions and provisions set forth in this Agreement and the other Loan Documents, the obligation of the Lenders to make any Loan hereunder shall be further subject to the satisfaction of each of the following conditions immediately prior to or contemporaneously with each such Loan, unless waived in writing by the Administrative Agent and the direction of the Required Lenders (each a "DIP Loan Funding Date"):

(a) A Notice of Borrowing relating to the Interim DIP Loans or the Final DIP Loans, as applicable, in accordance with Section 2.02(a), which shall be in accordance with the Initial Budget or then applicable Budget Update, as applicable (subject to Permitted Variances);

(b) the representations and warranties set forth in Article IV and in each of the other Loan Documents are true and correct in all material respects on the date of and after giving effect to the making of the Loans, (except, in the case of any representation and warranty which expressly relates to a given date or period, such representation and warranty shall be true and correct in all material respects as of the respective date or period, as the case may be) and any representation and warranty that is qualified by references to materiality or Material Adverse Effect or similar term or qualification, shall be true and correct in all respects;

(c) At the time of and immediately after giving effect to any New Money DIP Loans, no Default or Event of Default shall then have occurred and be continuing;

(d) With respect to the New Money DIP Loans made on and after the date of the Final DIP Order, the Bankruptcy Court shall have entered the Final DIP Order within twenty-five (25) calendar days following the Petition Date (subject to the availability of the Bankruptcy Court to conduct the final hearing on the DIP Facility), in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders, which Final DIP Order shall include, a Budget Update, as necessary, as an exhibit thereto, entered on notice to such parties as may be satisfactory to the Administrative Agent acting at the direction of the Required Lenders and otherwise as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of the Bankruptcy Court, (i) authorizing and approving, on a final basis, the DIP Facility and the transactions contemplated hereby, including, without limitation, the granting of the superpriority claim status, security interests and priming liens, and the payment of all fees, referred to herein; (ii) authorizing, on a final basis, the lifting or modification of the Automatic Stay to permit the Borrowers and the Guarantors to perform their obligations, and the Lenders to exercise their rights and remedies, with respect to the DIP Facility as provided in the

Final DIP Order; (iii) authorizing, on a final basis, the use of cash collateral and providing for adequate protection in favor of the Prepetition Agents and Prepetition Lenders as provided in the Final DIP Order; and (iv) reflecting such other terms and conditions that are mutually satisfactory to the Administrative Agent (at the direction of the Required Lenders) and the Debtors, in their respective discretion, in each case, which Final DIP Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent (at the direction of the Required Lenders);

(e) The making of the New Money DIP Loans shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently;

(f) The making of the New Money DIP Loans shall be authorized pursuant to the then applicable DIP Order;

(g) Other than the DIP Orders, there shall not exist any law, regulation, ruling, judgment, order, injunction or other restraint that prohibits, restricts or imposes a materially adverse condition on the DIP Facility or the exercise by the Administrative Agent at the direction of the Lenders of its rights as a secured party with respect to the DIP Collateral;

(h) Other than the Known Events, since the Petition Date there shall not have occurred an event that would result in a Material Adverse Effect;

(i) Other than the Chapter 11 Cases, as stayed upon the commencement of the Chapter 11 Cases, or as otherwise disclosed to the Administrative Agent prior to the Petition Date on Schedule 5.02(i) (including, for the avoidance of doubt, actions, proceedings and judgments in the CFPB Action prior to the Petition Date), there shall exist no action, suit, investigation, litigation or proceeding pending or threatened in writing in any court or before any arbitrator or governmental authority that (i) would reasonably be expected to result in a Material Adverse Effect or (ii) restrains, prevents or purports to affect materially adversely the legality, validity or enforceability of the DIP Facility or the consummation of the transactions contemplated thereby; and

(j) The Loan Parties shall be in compliance in all material respects with (i) the applicable DIP Order, and (ii) the Budget (subject to Permitted Variances).

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

SECTION 6.01 Representations and Warranties. Each Loan Party hereby represents and warrants to the Secured Parties as follows:

(a) Organization, Good Standing, Etc. Each Loan Party (i) is a corporation, limited liability company or limited partnership duly organized or incorporated, validly existing and in good standing (to the extent applicable) under the laws of the state or jurisdiction of its organization or incorporation, (ii) subject to entry by the Bankruptcy Court of the applicable DIP Orders and the terms therein, has all requisite power and authority to conduct its business as now conducted

and as presently contemplated and, in the case of the Borrowers, to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) subject to entry by the Bankruptcy Court of the applicable DIP Orders and the terms therein, is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except (solely for the purposes of this subclause (iii)) where the failure to be so qualified and in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization, Etc. Subject to entry by the Bankruptcy Court of the applicable DIP Orders and the terms therein, the execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene (A) any of its Governing Documents, (B) any applicable Requirement of Law except for those, the conflict with which, could not reasonably be expected to result in a Material Adverse Effect or (C) any Contractual Obligation binding on or otherwise affecting it or any of its properties (except for those, the conflict with which, could not reasonably be expected to result in a Material Adverse Effect), (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document) upon or with respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties, except, in each case of this clause (iv), where such contravention, default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal could not reasonably be expected to result in a Material Adverse Effect.

(c) Governmental Approvals. Subject to entry by the Bankruptcy Court of the applicable DIP Orders and the terms therein, no authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of any Loan Document to which it is or will be a party other than (x) those which have been provided or obtained on or prior to the Effective Date, (y) filings relating to the granting of DIP Liens to, or the enforcement of rights by, the Lenders and Agents and (z) those notices of filings with any Governmental Authority, which if not obtained or made would not, individually or in the aggregate, reasonably be expected to be material and adverse to the Loan Parties, taken as a whole.

(d) Enforceability of Loan Documents. Subject to entry by the Bankruptcy Court of the applicable DIP Orders and the terms therein, this Agreement is, the DIP Orders and each other Loan Document to which any Loan Party is or will be a party, when delivered hereunder will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms.

(e) Capitalization. On the Effective Date, after giving effect to the transactions contemplated hereby to occur on the Effective Date, the authorized Equity Interests of each Debtor (other than Lexington Law) and the issued and outstanding Equity Interests each Debtor (other than Lexington Law) are as set forth on Schedule 6.01(e). All of the issued and outstanding shares of Equity Interests of each Debtor (other than Lexington Law) have been validly issued and are fully paid and nonassessable, if applicable, and the holders thereof are not entitled to any preemptive, first refusal or other similar rights. All Equity Interests of such Subsidiaries of the

Parent are owned by the Parent, free and clear of all Liens (other than Permitted Liens). Except as described on Schedule 6.01(e), there are no outstanding debt or equity securities of any Debtor and no outstanding obligations of any Debtor convertible into or exchangeable for, or warrants, options or other rights (other than stock options granted to employees or directors and director's qualifying shares or similar nominal shares to the extent required under applicable legal requirements) for the purchase or acquisition from any Debtor, or other obligations of any Debtor to issue, directly or indirectly, any shares of Equity Interests of the Parent or any of its Subsidiaries. For the avoidance of doubt, as of the Effective Date, Lexington Law has no Subsidiaries.

(f) Litigation. Except for Known Events and as set forth in Schedule 6.01(f), there is no pending or, to the knowledge of any Loan Party, threatened, in writing, action, suit or proceeding affecting any Loan Party or any of its properties before any court or other Governmental Authority or any arbitrator that (i) if adversely determined, could reasonably be expected to have a Material Adverse Effect or (ii) relates to this Agreement or any other Loan Document or any transaction contemplated hereby or thereby.

(g) Financial Statements.

(i) The Financial Statements, copies of which have been delivered to each Agent and each Lender, fairly present, in all material respects, the consolidated financial condition of the Debtors as at the respective dates thereof and the consolidated results of operations of the Debtors for the fiscal periods ended on such respective dates, all prepared in accordance with GAAP. Since the Petition Date, other than a Known Event, no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(ii) The Administrative Representative has heretofore furnished to the Administrative Agent and each Lender the Initial Budget. The Initial Budget and each Budget delivered thereafter are based on good faith estimates and assumptions and believed by management of each of the Borrowers to be reasonable and fair in light of current conditions known to the Borrowers at the time delivered.

(h) Compliance with Law, Etc. Except for Known Events and as set forth in Schedule 6.01(f), no Loan Party or any of its Subsidiaries is in violation of (i) any of its Governing Documents, (ii) any material Requirement of Law or (iii) any material term of any Contractual Obligation binding on or otherwise affecting it or any of its properties, except in the case of clauses (ii) and (iii), to the extent such violations could not reasonably be expected to have a Material Adverse Effect.

(i) ERISA. Except as set forth on Schedule 6.01(i) and except as could not reasonably be expected to have a Material Adverse Effect, (i) each Loan Party and each Employee Plan is in substantial compliance with all Requirements of Law in all material respects, including ERISA, the Internal Revenue Code and the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, (ii) no ERISA Event has occurred nor is reasonably expected to occur with respect to any Employee Plan or Multiemployer Plan, (iii) the most recent annual report (Form 5500 Series) with respect to each Pension Plan, including any required Schedule B (Actuarial Information) thereto, copies of which have been filed with the

Internal Revenue Service and delivered to the Agents, is complete and correct in all material respects and fairly presents the funding status of such Pension Plan, and since the date of such report, there has been no material adverse change in such funding status, (iv) copies of each agreement entered into with the PBGC, the U.S. Department of Labor or the Internal Revenue Service with respect to any Employee Plan have been delivered to the Agents, and (v) each Employee Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has been determined by the Internal Revenue Service to be qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto is exempt from federal income tax under Section 501(a) of the Internal Revenue Code. No Loan Party or any of its ERISA Affiliates has incurred any liability to the PBGC which remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid. Except as could not reasonably be expected to have a Material Adverse Effect, there are no pending or, to the best knowledge of any Loan Party, threatened claims, actions, proceedings or lawsuits (other than claims for benefits in the normal course) asserted or instituted against (A) any Employee Plan or its assets, (B) any fiduciary with respect to any Employee Plan, or (C) any Loan Party or any of its ERISA Affiliates with respect to any Employee Plan. Except as required by Section 4980B of the Internal Revenue Code, no Loan Party or any of its ERISA Affiliates maintains an employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides health benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or any of its ERISA Affiliates or has any obligation to provide any such benefits for any current employee after such employee's termination of employment.

(j) Taxes, Etc. All federal, foreign and material state and local income tax returns and other tax reports required by applicable Requirements of Law to be filed by any Loan Party have been timely filed (or extensions have been obtained) and (ii) except for taxes not required to be paid pursuant to the DIP Orders or other “first day” orders, all Taxes imposed upon any Loan Party or any property of any Loan Party which have become due and payable on or prior to the date hereof have been paid, except (A) Taxes contested in good faith by proper proceedings which stay the imposition of any Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof on the Financial Statements in accordance with GAAP or (B) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(k) Regulations T, U and X. No Loan Party is or will be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, Regulation U or Regulation X), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, Regulation U and Regulation X.

(l) Nature of Business.

(i) No Loan Party is engaged in any business other than the business as conducted on the Effective Date and any similar, incidental, complementary, ancillary or related businesses. As of the Effective Date, the Parent has not engaged in and does not engage in any activity prohibited by Section 7.02(d)(ii), and has not owned and does not own any assets or property prohibited by Section 7.02(d)(ii).

(ii) The Parent does not have any material liabilities (other than liabilities arising under the Loan Documents), own any material assets (other than the Equity Interests of its Subsidiaries) or engage in any operations or business (other than the ownership of its Subsidiaries).

(m) Adverse Agreements, Etc. No Loan Party or any of its Subsidiaries is a party to any Contractual Obligation or subject to any restriction or limitation in any Governing Document or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority, which (either individually or in the aggregate) has, or in the future could reasonably be expected (either individually or in the aggregate) to have, a Material Adverse Effect.

(n) Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such Person lawfully to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person, except as could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Loan Parties, no condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim that any thereof is not in full force and effect, except, in each case, to the extent where such contravention, default, noncompliance, suspension, revocation, impairment, forfeiture, nonrenewal or failure to be in full force and effect could not reasonably be expected to have a Material Adverse Effect.

(o) Properties. Each Loan Party has title to, valid leasehold interests in, or valid licenses to use, all tangible property and assets material to its business, free and clear of all Liens, except Permitted Liens and, solely as to leasehold interests, except to the extent the failure to have such valid leasehold interests could not reasonably be expected to have a Material Adverse Effect. All such properties and assets are in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, in each case, except where the failure could not reasonably be expected to have a Material Adverse Effect.

(p) Employee and Labor Matters. Except as set forth on Schedule 6.01(p), (i) [reserved], (ii) no Loan Party is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of the employees of any Loan Party of Subsidiary, (iii) there is no unfair labor practice complaint pending or, to the knowledge of any Loan Party, threatened in writing against any Loan Party before any Governmental Authority and no grievance or arbitration proceeding pending or, to the knowledge of any Loan Party, threatened in writing against any Loan Party which arises out of or under any collective bargaining agreement, in each case, that could reasonably be expected to result in a Material Adverse Effect, (iv) there has been no strike, work stoppage, slowdown, lockout, or other labor dispute pending or threatened, in writing, against any Loan Party, that could reasonably be expected to result in a Material Adverse Effect, and (v) to the knowledge of each Loan Party, no labor organization or group of employees has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed, with the National Labor Relations Board or any other labor relations tribunal or authority. [No Loan Party has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act (“WARN”) or any similar Requirement of

Law, which remains unpaid or unsatisfied]. All payments due from any Loan Party on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party or Subsidiary, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(q) Environmental Matters. Except as set forth on Schedule 6.01(q) hereto, (i) no Loan Party is in violation of any Environmental Law, except to the extent any failure to be in compliance therewith could not reasonably be expected to have a Material Adverse Effect, (ii) each Loan Party has, and is in compliance with, all Environmental Permits for its respective operations and businesses, except to the extent any failure to have or be in compliance therewith could not reasonably be expected to have a Material Adverse Effect; (iii) there has been no Release at any of the properties currently or, to the knowledge of the Loan Parties, formerly owned or operated by any Loan Party, a respective predecessor in interest or, to the knowledge of the Loan Parties, at any disposal or treatment facility which received Hazardous Materials generated by any Loan Party or any respective predecessor in interest, which in any case of the foregoing could reasonably be expected to have a Material Adverse Effect; (iv) there are no pending or, to the knowledge of the Loan Parties, threatened in writing Environmental Claims against, or Environmental Liability of, any Loan Party or any respective predecessor in interest that could reasonably be expected to have a Material Adverse Effect; and (v) no Loan Party is performing or responsible for any Remedial Action that could reasonably be expected to have a Material Adverse Effect.

(r) Insurance. Each Loan Party maintains all insurance required by Section 7.01(h). Schedule 6.01(r) sets forth a list of all such insurance maintained by each Loan Party on the Effective Date.

(s) Use of Proceeds. The proceeds of the Loans shall be subject to and used in accordance with the Budget (subject to Permitted Variances) and subject to the terms and conditions of this Agreement, the “first day” orders (solely to the extent permitted under the Budget (subject to Permitted Variances)) and the DIP Orders to (i) provide working capital and for other general corporate purposes of the Debtors, (ii) fund the costs of the administration of the Chapter 11 Cases (including professional fees and expenses) and the section 363 sale, (iii) make any other payments consistent with the Budget, in each case, subject to Permitted Variances and (iv) solely to the extent a Sale Transaction (as defined in the Bid Procedures) is consummated, to fund a wind-down of the Debtors in an amount not to exceed \$2,625,000; provided such amount shall automatically be increased on a dollar for dollar basis to the extent, as of the date of the consummation of a Sale Transaction, the Loan Parties have capital in excess of the amount set forth in the then-current Budget; provided, however, such amount used pursuant to this clause (iv) shall in no event be greater than \$3,000,000. Proceeds to fund the wind-down budget shall only be permitted pursuant to clause (iv) above.

(t) DIP Orders. As of the date of each borrowing, the Loan Parties are in compliance in all material respects with the terms and conditions of the DIP Orders. Each of the Interim DIP Order (with respect to the period prior to the entry of the Final DIP Order) or the Final DIP Order (from and after the date the Final DIP Order is entered), as applicable, is in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent acting at the direction of the Required Lenders.

(u) Intellectual Property. Except as set forth on Schedule 6.01(u), each Loan Party owns or licenses or otherwise has the right to use all Intellectual Property that is necessary for the operation of its business, without infringement upon or conflict with the rights of any other Person with respect thereto, except for such infringements and conflicts which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 6.01(u) is a complete and accurate list as of the Effective Date of (i) each item of Registered Intellectual Property owned by each Loan Party, and (ii) each material Intellectual Property License to which each Loan Party is bound, including each Intellectual Property License for registered copyrights exclusively licensed to any Loan Party. The conduct of the business by any Loan Party as currently conducted does not infringe upon or conflict with any Intellectual Property owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened, except for such infringements and conflicts which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Loan Party, no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code pertaining to Intellectual Property is pending or proposed, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(v) Material Contractual Counterparties. Set forth on Schedule 6.01(v) is a complete and accurate list as of the Effective Date of all Material Contractual Counterparties of each Loan Party and a general description of the relationship between the Loan Parties and such Material Counterparties.

(w) Investment Company Act. None of the Loan Parties is (i) required to be registered as an “investment company” or an “affiliated person” or “promoter” of, or “principal underwriter” of or for, an “investment company”, as such terms are defined in the Investment Company Act of 1940, as amended, or (ii) subject to regulation under any Requirement of Law that limits in any respect its ability to incur Indebtedness or which may otherwise render all or a portion of the Obligations unenforceable (other than the Chapter 11 Cases).

(x) Customers and Suppliers. Except as could not reasonably be expected to result in a Material Adverse Effect, there exists no actual or, to the knowledge of the Loan Parties, threatened in writing termination, cancellation or limitation of, or modification to or change in, the business relationship between (i) any Loan Party, on the one hand, and any customer or any group thereof, on the other hand, or (ii) any Loan Party, on the one hand, and any supplier or any group thereof, on the other hand, and there exists no present state of facts or circumstances that could reasonably be expected to give rise to or result in any such termination, cancellation, limitation, modification or change.

(y) Chapter 11 Cases.

(i) The Chapter 11 Cases were commenced on the Petition Date in accordance in all material respects with the applicable law and proper notice has been or will be given of (i) the motion seeking approval of the Loan Documents and the DIP Orders, and (ii) the hearing for the entry of the Final DIP Order.

(z) Sanctions; Anti-Corruption and Anti-Money Laundering Laws.

(i) No Loan Party, any Subsidiary thereof or any of their respective directors, officers, or employees, shareholders or owners, (i) is a Sanctioned Person or currently the subject or target of any Sanctions, (ii) has assets located in a Sanctioned Country, (iii) conducts any activities or business in a Sanctioned Country, except as permitted by applicable Governmental Authority; (iv) conducts any business with or for the benefit of any Sanctioned Person, except as permitted by applicable Governmental Authority, or (v) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, except as permitted by applicable Governmental Authority.

(ii) Except as set forth in Schedule 6.01(f), each Loan Party and each Subsidiary is in compliance with all Sanctions and Anti-Money Laundering Laws in all material respects.

(iii) The Loan Parties will not directly or indirectly use, lend or contribute the proceeds of the Loans for any purpose that would breach the Sanctions or Anti-Money Laundering Laws.

(aa) Anti-Bribery and Corruption.

(i) Each Loan Party is in compliance with all Anti-Corruption Laws.

(ii) No Loan Party has offered, promised, paid, given or authorized the payment or giving of any money or other thing of value, directly or indirectly, to or for the benefit of any employee, official, representative or other Person acting on behalf of any foreign (i.e. non-U.S.) Governmental Authority, or otherwise engaged in any activity that may violate any Anti-Corruption Law.

(iii) No Loan Party has engaged in any activity that would breach any Anti-Corruption Laws.

(iv) Except as set forth in Schedule 6.01(f), to the knowledge of each Loan Party, there is no pending or threatened (in writing) action, suit, proceeding or investigation before any court or other Governmental Authority against any Loan Party, or any directors, officers, employees or other Person acting on behalf of any Loan Party that relates to a potential violation of any Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

(v) The Loan Parties will not directly or to such Loan Party's knowledge, indirectly use, lend or contribute the proceeds of the Loans for any purpose that would breach the Anti-Corruption Laws.

(bb) Full Disclosure.

(i) Each Loan Party has disclosed to the Agents all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the written reports, financial statements, certificates or other written information concerning the Loan Parties, furnished by or on behalf of any Loan

Party to the Agents (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which it was made, not materially misleading; provided that, with respect to projected financial information (including the projected financial information described in Section 6.01(g)(ii)), each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(ii) Projections have been prepared on a reasonable basis and in good faith based on assumptions, estimates, methods and tests that are believed by the Loan Parties to be reasonable at the time such projections were prepared and information believed by the Loan Parties to have been accurate based upon the information available to the Loan Parties at the time such projections were furnished to the Lenders, and Debtors are not aware of any facts or information that would lead it to believe that such projections are incorrect or misleading in any material respect; it being understood that (a) projections are by their nature subject to significant uncertainties and contingencies, many of which are beyond the Loan Parties' control, (b) actual results may differ materially from the projections and such variations may be material and no assurances are being given that the results reflected in the projections will be achieved and (c) the projections are not a guarantee of performance.

(cc) Budget Matters. The Borrowers hereby acknowledge and agree that any updated Budget (each such updated Budget, a "Budget Update") provided to the Administrative Agent and the Lenders shall not amend and supplement the applicable approved Budget until the Administrative Agent (at the direction of the Required Lenders) delivers a notice (which may be delivered by electronic mail) to the Administrative Representative stating that the Required Lenders have approved of such Budget Update in accordance with Section 7.01(a); provided, that, such Budget Update shall be deemed to be in form and substance satisfactory to the Administrative Agent at the direction of the Required Lenders if the Budget Update has been received by the Administrative Agent, and the Administrative Agent does not provide any comments for a period of three (3) Business Days after receipt thereof by the Administrative Agent and, for the avoidance of doubt, such Budget Update shall become the approved Budget for all purposes hereunder; provided, that, subject to the deemed approval set forth above, if the Administrative Agent does not deliver a notice of approval to the Borrowers, then the existing approved Budget shall continue to constitute the applicable approved Budget until such time as the subject Budget Update is agreed to among the Borrowers, Administrative Agent and the Required Lenders in accordance with Section 7.01(a). Once such Budget Update is so approved in writing by the Administrative Agent and the Required Lenders, it shall supplement or replace the prior approved Budget, and shall thereafter constitute the approved Budget.

(dd) Material Adverse Change. Since the Petition Date, subject to the Known Events, there has occurred no event which would reasonably be expected to result in a Material Adverse Effect.

(ee) Cash Management Accounts. Schedule 8.01 lists all banks and other financial institutions at which any Loan Party maintains deposit or other accounts as of the Effective Date, and such Schedule correctly identifies the name, address and any other relevant contact information reasonably requested by the Administrative Agent with respect to each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor; and (b) the DIP Orders grant the Administrative Agent “control” (as such term is used in the UCC) over such Cash Management Accounts for the benefit of the Secured Parties.

## ARTICLE VII

### COVENANTS OF THE LOAN PARTIES AND OTHER DIP COLLATERAL MATTERS

SECTION 7.01 Affirmative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than obligations under Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party will, unless the Required Lenders shall otherwise consent in writing:

(a) Reporting Requirements. Furnish to each Agent and each Lender:

(i) within 30 days after the end of each fiscal month of the Debtors commencing with the fiscal month ending May 31, 2023, (v) internally prepared consolidated balance sheets, statements of operations and retained earnings and statements of cash flows as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year, and (B) the projections, all in reasonable detail and certified by the chief financial officer of the Debtors as fairly presenting, in all material respects, the financial position of each Debtor at the end of such fiscal month and the results of operations, retained earnings and cash flows of the Debtors for such fiscal month and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments, (w) a dashboard provided in Microsoft Excel format which includes “Key Metrics” (in the form attached hereto as Exhibit 7.01(a)(i)) broken out between the credit repair and credit care product segments and with a total of such product segments (for the avoidance of doubt, “Key Metrics” shall also include credit repair pay rate detail), (x) [reserved] (y) any additional key performance indicator reasonably requested by the Administrative Agent during such fiscal month for the business of each Debtor and (z) unless cancelled by the Administrative Agent at the direction of the Required Lenders, on each Friday (or in the event that such day is not a Business Day, then on the Business Day immediately following) during the Chapter 11 Cases, the Debtors’ senior management and professionals shall host a telephonic meeting for the Lenders and their professionals at which the Debtors’ senior management and professionals shall provide an update to the Lenders and their professionals (and shall make themselves available for questions) with respect to the 363 process and the financial and

operating performance of the Loan Parties and their estates, including but not limited to, the Variance Report;

(ii) within 45 days after the end of each fiscal quarter of the Debtors commencing with the first fiscal quarter of the Debtors ending after the Effective Date, consolidated balance sheets, statements of operations and retained earnings and statements of cash flows of the Debtors as at the end of such quarter, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding Fiscal Year all in reasonable detail and certified by the chief financial officer of the Debtors' as fairly presenting, in all material respects, the financial position of each Debtor as of the end of such quarter and the results of operations and cash flows of each Debtor for such quarter and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of each Debtor furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(iii) [Reserved];

(iv) [Reserved];

(v) (1) following delivery of the Budget on the Petition Date, by not later than 5:00 p.m. Mountain Time on (x) each second Thursday thereafter, a Cash Flow Update and (y) the earlier of (i) each fourth Thursday thereafter, a Budget Update and (ii) within three (3) Business Days' of receipt of any Retained Proceeds (provided that for avoidance of doubt, such Budget Update shall be delivered prior to the effectiveness of a Notice of Borrowing), a Budget Update, in each case, in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders (provided, such new Budget shall be deemed to be in form and substance reasonably satisfactory to the Administrative Agent at the direction of the Required Lenders if the Budget has been received by applicable representatives designated by Administrative Agent, and the Administrative Agent does not provide any comments for a period of three (3) Business Days after receipt thereof by the Administrative Agent and, for the avoidance of doubt, such Budget shall become the approved Budget for all purposes under this Agreement) for the subsequent 13 week period consistent with the form of the Budget, and such Budget Update shall become the "Budget" for the purposes of the DIP Facility upon the Administrative Agent's acknowledgement at the direction of the Required Lenders that the proposed Budget Update is substantially in the form of the Budget and in substance satisfactory to the Administrative Agent at the direction of the Required Lenders (provided, that, subject to the deemed approval set forth in this Section 7.01(a)(v), until a new Budget has been approved by the Administrative Agent at the direction of the Required Lenders, the most recently approved Budget shall govern); (2) beginning on the Thursday following a full calendar week after the Petition Date (by not later than 5:00 p.m. Mountain Time), and on every Thursday thereafter (by not later than 5:00 p.m. Mountain Time), (x) a variance report (the "Variance Report") setting forth actual cash receipts and disbursements and cash flows of the Debtors for the prior Testing Period and setting forth all the variances,

on a line-item and aggregate basis, from the amount set forth for such period as compared to the applicable approved Budget delivered by the Debtors, in each case, on a weekly basis (and each such Variance Report shall include explanations for all material variances and shall be certified by the chief financial officer of the Debtors), and (y) an updated “key performance indicators” slide deck prepared by the Borrower in form and substance consistent with the deck delivered to the Administrative Agent on May 31, 2023 and to the Lenders prior to the Effective Date; and (3) the Permitted Variances with respect to each Testing Period shall be determined and reported to the Administrative Agent and the Lenders, not later than 5:00 p.m. Mountain Time on each Thursday immediately following the end of each such Testing Period. Additional variances, if any, from the Budget, and any proposed changes to the Budget, shall be subject to the approval of the Administrative Agent (acting at the direction of the Required Lenders). The Debtors will promptly provide notice to the Administrative Agent, for distribution to the Lenders, of any Material Adverse Effect.

(vi) promptly after the furnishing thereof, copies of any notices of default to any holder of any class or series of debt securities of any Loan Party and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 7.01(a);

(vii) [reserved];

(viii) promptly after submission to any Governmental Authority, all documents and information furnished to such Governmental Authority in connection with any material investigation of any Loan Party other than routine inquiries by such Governmental Authority;

(ix) promptly and in any event, within 3 Business Days after actual knowledge of an Authorized Officer of the Loan Parties of the occurrence of an Event of Default or Default or the occurrence of any event or development that could reasonably be expected to have a Material Adverse Effect, the written statement of an Authorized Officer of the Administrative Representative setting forth the details of such Event of Default or Default or other event or development having a Material Adverse Effect and the action which the affected Loan Party proposes to take with respect thereto;

(x) as soon as possible and in any event: (A) at least 10 days prior to any event or development that could reasonably be expected to result in or constitute an ERISA Event, and, to the extent not reasonably expected, within 5 days after the occurrence of any ERISA Event, notice of such ERISA Event (in reasonable detail), (B) within three days after receipt thereof by any Loan Party or any of its ERISA Affiliates from the PBGC, copies of each notice received by any Loan Party or any of its ERISA Affiliates of the PBGC's intention to terminate any Pension Plan or to have a trustee appointed to administer any Pension Plan, (C) within 10 days after the filing thereof with the Internal Revenue Service, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Pension Plan, (D) within 3 days after receipt thereof by any Loan Party or any of its ERISA Affiliates from a sponsor of a Multiemployer Plan or from the PBGC, a copy of each notice received by any Loan Party or any of its ERISA Affiliates

concerning the imposition or amount of withdrawal liability under Section 4202 of ERISA or indicating that such Multiemployer Plan may enter reorganization status under Section 4241 of ERISA, and (E) within 10 days after any Loan Party sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Loan Party;

(xi) promptly after the commencement thereof but in any event not later than 5 Business Days after service of process with respect thereto on, or the obtaining of knowledge thereof by, any Loan Party, notice of each action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(xii) within 5 Business Days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives from any Material Contractual Counterparty;

(xiii) within 5 Business Days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with the sale or other Disposition of the Equity Interests of, or all or substantially all of the assets of, any Loan Party;

(xiv) within 5 Business Days after the delivery thereof to each Debtors' Board of Directors, copies of all reports or other information so delivered;

(xv) promptly after (A) the sending or filing thereof, copies of all statements, reports and other information any Loan Party sends to any holders of its Indebtedness or its securities or filed with the SEC or any national (domestic or foreign) securities exchange and (B) the receipt thereof, a copy of any material notice received from any holder of its Indebtedness;

(xvi) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to any Loan Party by its auditors in connection with any annual or interim audit of the books thereof;

(xvii) within 5 Business Days after delivery thereof of a notice or communication from any government regulator that regulates credit repair service organizations of any material liability of a Loan Party assessed by a United States federal or state agency (other than routine notices in the ordinary course of business);

(xviii) simultaneously with the delivery of the financial statements of the Debtors required by clauses (ii) and (iii) of this Section 7.01(a), if, as a result of any change in accounting principles and policies from those used in the preparation of the Financial Statements that is permitted by Section 7.02(q), the consolidated financial statements of the Debtors delivered pursuant to clauses (ii) and (iii) of this Section 7.01(a) will differ from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more

statements of reconciliation for all such prior financial statements in form and substance satisfactory to the Agents;

(xix) (i) promptly upon receipt thereof by a Debtor, any judgment entered in respect of the CFPB Action, any definitive settlement or other agreement entered into by a Debtor in respect of the CFPB Action, and substantially final drafts of term sheets, commitment letters or definitive documentation concerning the issuance of Equity Interests of the Debtors or the issuance or incurrence of Indebtedness by the Debtors and (ii) such material written information, analysis, materials and communications prepared in connection with the CFPB Action that are reasonably requested by the Administrative Agent or any Lender, including with respect to the impact of any settlement or other agreement with respect to the CFPB Action on the future operations or financial prospects of a Debtor; and

(xx) within 5 Business Days after receipt thereof of any Authorized Officer of the Borrowers, furnish to the Administrative Agent a notice describing the allegations of any Environmental Claim or Environmental Liabilities;

(xxi) promptly upon written request, such other information concerning the financial condition or operations of any Loan Party as any Agent or any Lender may from time to time may reasonably request.

Notwithstanding anything to the contrary in this Section 7.01(a) or elsewhere in this Agreement (including, without limitation, Section 7.01(f)), no Loan Party shall be required to provide any information or documentation that would reasonably be expected to jeopardize a Loan Party's attorney-client privilege (as determined by legal counsel to such Loan Party) or the disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by law, or any Requirement of Law, prohibited by fiduciary duty or Contractual Obligation, in each case not created in contemplation thereof.

(b) [Reserved]

(c) Compliance with Laws; Payment of Taxes.

(i) Comply, and cause each of its Subsidiaries to comply, with all Requirements of Law, judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing), except (x) as set forth in Schedule 6.01(f) or (y) to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(ii) Pay, and cause each of its Subsidiaries to pay, in full before delinquency or before the expiration of any extension period, all federal, state and other material Taxes imposed upon any Loan Party or any of its Subsidiaries or any property of any Loan Party or any of its Subsidiaries, except (i) unpaid Taxes in an aggregate amount at any one time not in excess of \$1,000,000, (ii) Taxes contested in good faith by proper proceedings which stay the imposition of any Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with

GAAP or (iii) Taxes nonpayment of which is permitted or required by the Bankruptcy Code or (iv) payment is stayed by Bankruptcy Court.

(d) Preservation of Existence, Etc. Except for Known Events and as expressly permitted by Section 7.01(c), maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except where the failure to maintain and preserve such rights and privileges or to the extent that the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

(e) Keeping of Records and Books of Account. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, with complete entries made to permit the preparation of financial statements in accordance with GAAP.

(f) Inspection Rights. Subject to the limitations set forth in Section 2.06(c), permit, and cause each of its Subsidiaries to permit, the agents and representatives of any Agent, upon reasonable advance notice at any time and from time to time during normal business hours, at the expense of the Borrowers, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives; provided, that so long as no Event of Default shall have occurred and be continuing, the Agents shall not be permitted to conduct, and, the Loan Parties shall not be required to reimburse the Agents for, more than one (1) such audit, physical count, and valuation during any calendar year. In furtherance of the foregoing, each Loan Party hereby authorizes its independent accountants, and the independent accountants of each of its Subsidiaries, to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the agents and representatives of any Agent in accordance with this Section 7.01(f); provided, further, that the Administrative Agent and the Lenders shall have reasonable access to the Debtors and its advisors in respect of the CFPB Action.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its tangible properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear and casualty and condemnation excepted, except to the extent any such failure to preserve could not reasonably be expected to result in a Material Adverse Effect, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except to the extent the failure to so maintain and preserve or so comply could not reasonably be expected to have a Material Adverse Effect.

(h) Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, cyber, worker's compensation and business

interruption insurance) with respect to the DIP Collateral and its other properties (including all real property leased or owned by it) and business, in such amounts and covering such risks as is (i) carried generally in accordance with sound business practice by companies in similar businesses similarly situated and (ii) required by any Requirement of Law. All policies covering the DIP Collateral are to be made payable to the Collateral Agent for the benefit of the Agents and the Lenders, as their interests may appear, in case of loss, under a standard noncontributory “lender” or “secured party” clause and are to contain such other provisions as the Collateral Agent may reasonably require to fully protect the Lenders' interest in the DIP Collateral and to any payments to be made under such policies; provided, however, that each Agent hereby agrees that the terms of the Loan Parties' insurance certificates (and not the endorsements) in effect on the Effective Date are satisfactory to each Agent; provided, further, that within 30 days of the Effective Date (which may be extended by Collateral Agent in its sole discretion), Borrower shall deliver, or cause to be delivered, to the Collateral Agent, insurance endorsements in form and substance satisfactory to the Collateral Agent. All certificates of insurance are to be delivered to the Collateral Agent and the policies are to be premium prepaid, with the loss payable and additional insured endorsement in favor of the Collateral Agent for the benefit of the Agents and the Lenders, as their respective interests may appear, and such other Persons as the Collateral Agent may designate from time to time, and shall provide for not less than 30 days' (10 days' in the case of non-payment) prior written notice to the Collateral Agent of the exercise of any right of cancellation in respect of liability, casualty and property insurance policies. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Collateral Agent may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Collateral Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Subject to DIP Order, upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(i) Obtaining of Permits, Etc. Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations that are necessary or useful in the proper conduct of its business, in each case, except to the extent the failure to obtain, maintain, preserve or take such action could not reasonably be expected to have a Material Adverse Effect.

(j) Environmental.

(i) Keep the DIP Collateral free of any Environmental Lien;

(ii) Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all Environmental Permits that are necessary or useful in the proper conduct of its business, and comply, and cause each of its Subsidiaries to comply, with all Environmental Laws and Environmental

Permits, except to the extent the failure to so obtain, maintain, preserve or comply could not reasonably be expected to have a Material Adverse Effect;

(iii) Take all commercially reasonable steps to prevent any Release or threatened Release of Hazardous Materials in violation of any Environmental Law or Environmental Permit at, in, on, under or from any property owned, leased or operated by any Loan Party or its Subsidiaries that could reasonably be expected to result in a Material Adverse Effect;

(iv) Provide the Collateral Agent with written notice within ten (10) days of any of the following: (A) discovery of any Release of a Hazardous Material or environmental condition at, in, on, under or from any property currently or formerly owned, leased or operated by any Loan Party, Subsidiary or predecessor in interest or any violation of Environmental Law or Environmental Permit that in the case of each of the foregoing could reasonably be expected to result in a Material Adverse Effect; (B) notice that an Environmental Lien has been filed against any DIP Collateral; or (C) an Environmental Claim or Environmental Liabilities that could reasonably be expected to result in a Material Adverse Effect;

(k) Fiscal Year. Cause the Fiscal Year of the Debtors to end on December 31 of each calendar year unless the Agents consent to a change in such Fiscal Year (and appropriate related changes to this Agreement).

(l) [reserved]

(m) [reserved]

(n) Anti-Corruption Laws; Anti-Money Laundering Laws; Sanctions.

(i) Maintain, and cause each of its Subsidiaries to maintain, policies and procedures designed to promote compliance by each Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws and Anti-Money Laundering Laws.

(ii) Except as set forth in Schedule 6.01(f), comply, and cause each of its Subsidiaries to comply, with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(iii) Neither Loan Party nor, to the best knowledge of any Loan Party, any director, officer, employee or any Person acting on behalf of any Loan Party will engage in any activity that would breach any Anti-Corruption Law.

(iv) Promptly notify the Administrative Agent of any action, suit or investigations by any court or Governmental Authority in relation to an alleged breach of the Anti-Corruption Law.

(v) Not directly or indirectly use, lend or contribute the proceeds of any Loan for any purpose that would breach any Anti-Corruption Law.

(vi) Each Loan Party and Affiliate, officer, employee or director, acting on behalf of the Loan Party is (and will take no action which would result in any such Person not being) in compliance with (A) all applicable OFAC rules and regulations, (B) all applicable United States of America, United Kingdom, United Nations, European Union, German, Canadian, Australian and all other reasonable internationally respected national autonomous sanctions, embargos and trade restrictions and (C) all applicable provisions of the USA Patriot Act. In addition, none of the activities or business of any Loan Party includes any kind of activities or business of or with any Person or in any country or territory that is subject to any Sanctions.

(vii) In order to comply with the “know your customer/borrower” requirements of the Anti-Money Laundering Laws, promptly provide to the Administrative Agent upon its reasonable request from time to time (A) information relating to individuals and entities affiliated with any Loan Party that maintain a business relationship with the Administrative Agent, and (B) such identifying information and documentation as may be available for such Loan Party in order to enable the Administrative Agent or any Lender to comply with Anti-Money Laundering Laws.

(o) [Reserved].

(p) Board Information Rights. The Administrative Agent (for distribution to the Lenders) shall have the right to receive all information provided to the members of the Board of Directors or any similar group performing an executive oversight or similar function of the Debtors (or its direct or indirect ultimate parent holding company) and any of its Subsidiaries in anticipation of or at such meeting (regular or special and whether telephonic or otherwise), in addition to copies of the records of the proceedings or minutes of such meeting, when provided to the members, and the board observer shall keep such materials and information confidential in accordance with Section 12.19 of this Agreement. Notwithstanding the foregoing, such materials and other information, in the reasonable good faith judgment of the Parent or Lexington Law, as applicable, would reasonably be expected to result in a conflict of interest or would reasonably be expected to result in the loss of the attorney client privilege, then such materials and other information need not be provided to the Administrative Agent.

(q) Use of Proceeds. The proceeds of the Loans shall be used only for the purposes set forth in Section 6.01(s). Without in any way limiting the foregoing, and otherwise in accordance with the DIP Orders, no DIP Collateral, DIP Proceeds or any portion of the Carve-Out may be used directly or indirectly by any of the Debtors, the Committee, if any, or any trustee or other estate representative appointed in the Chapter 11 Cases (or any successor chapter 7 case) or any other person or entity (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith): (a) to seek authorization to obtain Liens or security interests that are senior to or *pari passu* with the DIP Liens or the Liens in existence on the Petition Date securing the Prepetition Obligations (the “Prepetition Liens”) (except to the extent expressly set forth herein); or (b) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, any of the Administrative Agent, the Lenders, the Prepetition Agents or the Prepetition Lenders,

and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing (all in their capacities as such), with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (i) any claims or causes of action arising under chapter 5 of the Bankruptcy Code; (ii) any so-called “lender liability” claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the Obligations, the DIP Credit Facility Super-Priority Claims, the DIP Liens, the Loan Documents, the Prepetition Liens, the Prepetition Loan Documents, or the Prepetition Obligations; (iv) any action seeking to invalidate, modify, set aside, avoid or subordinate, in whole or in part, the Obligations or the Prepetition Obligations; (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to either (A) the Administrative Agent or the Lenders hereunder or under any of the Loan Documents, or (B) the Prepetition Agent or the Prepetition Lenders under any of the Prepetition Loan Documents (in each case, including, without limitation, claims, proceedings or actions that might prevent, hinder or delay any of the Administrative Agent’s or the Lenders’ assertions, enforcements, realizations or remedies on or against the DIP Collateral in accordance with the applicable Loan Documents and the DIP Orders); or (vi) objecting to, contesting, or interfering with, in any way, the Administrative Agent’s and the Lenders’ enforcement or realization upon any of the DIP Collateral once an Event of Default has occurred; provided, however, that no more than \$50,000 in the aggregate of the DIP Collateral, DIP Proceeds, cash collateral or any portion of the Carve-Out or any other amounts may be used by the Committee, if any, to investigate claims and/or liens of the Prepetition Agents and Prepetition Lenders under the Prepetition Loan Documents.

(r) Pari Passu. Subject in all respects to the Carve-Out, the obligations of each Loan Party under this Agreement and the other Loan Documents to which it is a party rank and will rank at least *pari passu* in priority of payment and in all other respects with all its other present and future unsecured and unsubordinated Indebtedness of such Loan Party.

(s) Further Assurances. Take such action and execute, acknowledge and deliver, and cause each of its Subsidiaries to take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as any Agent may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement, the other Loan Documents, and the DIP Orders, (ii) to subject to valid and perfected first priority Liens (subject to Permitted Liens) any of the DIP Collateral or any other property of any Loan Party, (iii) to establish and maintain the validity and effectiveness of any of the Loan Documents and the validity, perfection and priority of the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer and confirm unto each Secured Party the rights now or hereafter intended to be granted to it under this Agreement or any other Loan Document. In furtherance of the foregoing, to the maximum extent permitted by applicable law, each Loan Party (i) if a Loan Party has failed to comply with its undertakings in this Section after a written request therefor and a reasonable time for performance of such request, authorizes each Agent to execute any such agreements, instruments or other documents in such Loan Party's name and to file such agreements, instruments or other documents in any appropriate filing office, (ii) authorizes each Agent to file any financing statement required hereunder or under any other Loan Document, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (iii) ratifies the filing of any financing statement,

and any continuation statement or amendment with respect thereto, filed without the signature of such Loan Party prior to the date hereof.

(t) Milestones. Each of the Debtors covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Loan Document have been paid in full in cash (other than Contingent Indemnity Obligations not yet due and payable), each of the Debtors shall and shall cause each of the Subsidiaries to ensure that each of the Milestones set forth in the DIP Orders is achieved in accordance with the applicable timing referred to therein (or such later dates as may be approved in writing by the Required Lenders in their sole discretion).

(u) Bankruptcy Covenants. Notwithstanding anything in the Loan Documents to the contrary, the Debtors shall comply with all material covenants, terms and conditions and otherwise perform all obligations set forth in the DIP Orders in all material respects.

(v) Chapter 11 Cases.

(i) The Chapter 11 Cases were commenced on the Petition Date in accordance with the applicable law and proper notice has been or will be given of (i) the motion seeking approval of the Loan Documents and the DIP Orders, and (ii) the hearing for the entry of the Final DIP Order.

(ii) Each Debtor shall deliver or cause to be delivered for review and comment, as soon as commercially reasonable and in any event not less than two (2) Business Days (or as soon thereafter as is reasonably practicable under the circumstances) prior to filing, all material pleadings, motions and other documents (provided that any of the foregoing relating to the DIP Facility, Sale Motion, Bid Procedures, or sale of any assets of the Debtors shall be deemed material) to be filed on behalf of the Debtors with the Bankruptcy Court (including, but not limited to, (i) a list of proposed critical vendors and the amounts the Debtors would propose to pay such critical vendors pursuant to an order authorizing such payment and (ii) a list of executory contracts that the Debtors may reject) to King & Spalding LLP and to Administrative Agent (for delivery to the Lenders) and shall consult in good faith with such counsel regarding the form and substance of any such proposed filing. The Borrowers shall provide copies to the Administrative Agent and the Lenders of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of the Debtors with the Bankruptcy Court, distributed by or on behalf of the Debtors to any Committee, filed with respect to the Chapter 11 Cases or filed with respect to any Loan Document. In connection with the Chapter 11 Cases, the Debtors shall give the proper notice for (x) the motions seeking approval of the Loan Documents and the DIP Orders and (y) the hearings for the approval of the Final DIP Order.

(iii) Each Loan Party shall deliver or promptly cause to be delivered to the Administrative Agent and the Lenders, in accordance with the Bid Procedures, copies of any term sheets, proposals, presentations, amendments to any asset purchase

agreement(s) or other documents, from any party, related to (i) the restructuring of the Debtors, or (ii) the sale of assets of one or more of the Debtors.

(iv) Except to the extent permitted (or required) hereunder, under the DIP Orders, under the Budget (subject to Permitted Variances) or as approved by an order of the Bankruptcy Court, no Loan Party shall, without the express prior written consent of the Required Lenders or pursuant to an order of the Bankruptcy Court after notice and a hearing, use the DIP Proceeds or cash collateral to make any critical vendor payment with respect to any prepetition amount.

SECTION 7.02 Negative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than obligations under Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, whether now owned or hereafter acquired; file or suffer to exist under the Uniform Commercial Code or any Requirement of Law of any jurisdiction, a financing statement (or the equivalent thereof) that names it or any of its Subsidiaries as debtor; sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof) other than, as to all of the above, Permitted Liens.

(b) Indebtedness. Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, assume, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(c) Fundamental Changes; Dispositions.

(i) Wind-up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, including by means of a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, or permit any of its Subsidiaries to do (or agree to do) any of the foregoing;

(ii) Make any Disposition, whether in one transaction or a series of related transactions, of all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing; provided, however, that any Loan Party and its Subsidiaries may make Permitted Dispositions; provided, however, that, notwithstanding the foregoing, in no event shall any Loan Party or any of their Subsidiaries make any Disposition of Intellectual Property or any other asset material to the business of the Loan Parties and their Subsidiaries, taken as a whole to any Person other than a Loan Party (except for Lexington Law).

(d) Change in Nature of Business.

(i) Make, or permit any of its Subsidiaries to make, any change in the nature of its business as described in Section 6.01(l).

(ii) Permit the Parent to (A) engage in any business or other commercial activities, (B) own any assets or property, (C) incur any Indebtedness, guaranty obligations or other contractual obligations, or (D) grant any Liens over any of its assets or property, other than: (1) ownership of the Equity Interests of its Subsidiaries; (2) the maintenance of its corporate existence, and activities and contractual rights incidental thereto; (3) participation in tax, accounting and other administrative activities (including preparing reports and financial statements), (4) performance of its obligations as a guarantor under any Permitted Indebtedness to which it is a party, (5) the issuance of its own Equity Interests, (6) holding cash and Cash Equivalents and the making, owning and holding of Permitted Investments, (7) Permitted Restricted Payments, (8) in connection with the Carve-Out, and (9) obligations and activities incidental to the business or activities described above, including providing indemnification of officers, directors, shareholders and employees.

(iii) Permit Lexington Law to (A) engage in any business or other commercial activities, (B) own any assets or property, (C) incur any Indebtedness, guaranty obligations or other contractual obligations, or (D) grant any Liens over any of its assets or property, each other than in the ordinary course of business and consistent with past practices.

(e) Loans, Advances, Investments, Etc. Make or commit or agree to make, or permit any of its Subsidiaries make or commit or agree to make, any Investment in any other Person except for Permitted Investments; provided, however, that, notwithstanding the foregoing, in no event shall any Loan Party or any of their Subsidiaries make any Investment of Intellectual Property material to the business of the Loan Parties and their Subsidiaries, taken as a whole, in any Person other than a Loan Party (excluding Lexington Law).

(f) Sale and Leaseback Transactions. Enter into, or permit any of its Subsidiaries to enter into, any Sale and Leaseback Transaction.

(g) [Reserved].

(h) Restricted Payments. Make or permit any of its Subsidiaries to make any Restricted Payment other than Permitted Restricted Payments; provided, however, that, notwithstanding the foregoing, in no event shall any Loan Party or any of their Subsidiaries make any Restricted Payment of Intellectual Property material to the business of the Loan Parties and their Subsidiaries, taken as a whole, to any Person other than a Loan Party (excluding Lexington Law).

(i) Federal Reserve Regulations. Permit any Loan or the proceeds of any Loan under this Agreement to be used for any purpose that would cause such Loan to be a margin loan under the provisions of Regulation T, Regulation U or Regulation X of the Board.

(j) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except

(i) subject to the Budget, transactions for fair consideration and on terms no less favorable, to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, (ii) transactions with (A) another Loan Party (other than Lexington Law) and (B) Lexington Law in the ordinary course of business and consistent with past practice, (iii) transactions contemplated by the (A) the Budget (subject to Permitted Variances) or (B) the DIP Orders or the “first day” orders (solely to the extent permitted under the Budget (subject to Permitted Variances)), (iv) transactions permitted by Section 7.02(e) and Section 7.02(h), (v) reasonable and customary director and officer compensation (including bonuses and stock option programs), benefits and indemnification arrangements (including bonuses, retirement, health, stock option and other benefits), in each case approved by the Board of Directors (or a committee thereof) of such Loan Party or such Subsidiary that are in place on the Effective Date or otherwise consistent with the Budget (subject to Permitted Variances), (vi) transactions contemplated by the Restructuring Support Agreement, (vii) [reserved], (viii) [reserved] and (ix) any transactions permitted under this Agreement, any other Loan Document or the DIP Orders.

(k) Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of any Loan Party (i) to pay dividends or to make any other distribution on any shares of Equity Interests of such Subsidiary owned by any Loan Party or any of its Subsidiaries, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided, however, that nothing in any of clauses (i) through (iv) of this Section 7.02(k) shall prohibit or restrict compliance with:

(A) (v) this Agreement and the other Loan Documents, (w) the DIP Orders, the Budget (subject to Permitted Variances) or the “first day” orders (solely to the extent permitted under the DIP Orders), (x) the Restructuring Support Agreement, (y) the Prepetition First Lien Loan Documents and (z) the Prepetition Second Lien Loan Documents;

(B) any agreement in effect on the date of this Agreement and described on Schedule 7.02(k), or any extension, replacement or continuation of any such agreement; provided, that, any such encumbrance or restriction contained in such extended, replaced or continued agreement is no less favorable to the Agents and the Lenders than the encumbrance or restriction under or pursuant to the agreement so extended, replaced or continued;

(C) any applicable law, rule or regulation (including, without limitation, applicable currency control laws and applicable state corporate statutes restricting the payment of dividends in certain circumstances);

(D) in the case of clause (iv), (1) customary restrictions on the subletting, assignment or transfer of any specified property or asset set forth in a lease, license, asset sale agreement or similar contract for the conveyance of such property or asset and (2) instrument or other document evidencing a Permitted Lien (or the

Indebtedness secured thereby) from restricting on customary terms the transfer of any property or assets subject thereto;

(E) customary restrictions on dispositions of real property interests in reciprocal easement agreements;

(F) customary restrictions in agreements for the sale of assets on the transfer or encumbrance of such assets during an interim period prior to the closing of the sale of such assets; or

(G) customary restrictions in contracts that prohibit the assignment of such contract.

(l) Limitations on Negative Pledges. Enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) (v) this Agreement and the other Loan Documents, (w) the DIP Orders, (x) the Restructuring Support Agreement, (y) the Prepetition First Lien Loan Documents and (z) the Prepetition Second Lien Loan Documents, (ii) [reserved], (iii) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of assets or of a Subsidiary pending such sale or other disposition; provided that such restrictions and conditions apply only to the assets or Subsidiary to be sold or disposed of and such sale or disposition is permitted hereunder, and (iv) customary provisions in leases restricting the assignment or sublet thereof.

(m) Modifications of Indebtedness, Organizational Documents and Certain Other Agreements; Etc. Prepay, redeem, purchase, defease, exchange or repurchase any Indebtedness or amend, change or modify any of the terms of any such Indebtedness entered into by any Debtor or its subsidiaries, except for the Obligations or as otherwise set forth in the DIP Orders, the “first day” orders (solely to the extent permitted under the DIP Orders) or the Budget (subject to Permitted Variances).

(n) Investment Company Act of 1940. Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an “investment company” or a company “controlled” by an “investment company” not entitled to an exemption within the meaning of such Act.

(o) ERISA. (i) Cause or fail to prevent, or permit any of its ERISA Affiliates to cause or fail to prevent, an ERISA Event, or (ii) adopt, or permit any of its ERISA Affiliates to adopt, any employee welfare benefit plan within the meaning of Section 3(1) of ERISA that provides benefits to employees after termination of employment other than as required by Section 601 of ERISA or other Requirements of Law.

(p) Environmental. Permit the use, handling, generation, storage, treatment, Release or disposal of Hazardous Materials on, in, at, under or from any property owned, leased or operated by it or any of its Subsidiaries, except in compliance with Environmental Laws (other than any noncompliance that could not reasonably be expected to have a Material Adverse Effect).

(q) Accounting Methods. Modify or change, or permit any of its Subsidiaries to modify or change, its method of accounting or accounting principles from those utilized in the preparation of the Financial Statements without the consent of the Administrative Agent at the direction of the Required Lenders (other than as may be required to conform to GAAP).

(r) Sanctioned Persons; Anti-Corruption Laws; Anti-Money Laundering Laws.

(i) Conduct, nor permit any of its Subsidiaries to conduct, any business or engage in any transaction or deal with or for the benefit of any Sanctioned Person, including the making or receiving of any contribution of funds, goods or services to, from or for the benefit of any Sanctioned Person; or

(ii) Use, nor permit any of its Subsidiaries to use, directly or indirectly, any of the proceeds of any Loan, (A) to fund any activities or business of or with any Sanctioned Person or in any other manner that would result in a violation of any Sanctions by any Person (including by any Person participating in any Loan, whether as underwriter, advisor, investor or otherwise), or (B) for the purpose of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law.

(s) Divisions. Notwithstanding anything herein or any other Loan Document to the contrary, no Loan Party that is a limited liability company may divide itself into two or more limited liability companies or series thereof (pursuant to a “plan of division” as contemplated under the Delaware Limited Liability Company Act or otherwise) without the prior written consent of the Administrative Agent at the direction of the Required Lenders.

(t) Employee Payments. No Loan Party shall make any bonus payment to any executive officers or employees of the Debtors unless in accordance with the Budget (subject to Permitted Variances).

## ARTICLE VIII

### **CASH MANAGEMENT ARRANGEMENTS AND OTHER DIP COLLATERAL MATTERS**

SECTION 8.01 Cash Management Arrangements. (a) The Loan Parties shall (i) establish and maintain cash management services of a type and on terms reasonably satisfactory to the Agents at one or more of the banks set forth on Schedule 8.01 (each a “Cash Management Bank”) and (ii) except as otherwise provided under Section 8.01(b), deposit or cause to be deposited promptly, and in any event no later than the next Business Day after the date of receipt thereof, all proceeds in respect of any DIP Collateral, all Collections (of a nature susceptible to a deposit in a bank account) and all other amounts received by any Loan Party (including payments made by Account Debtors directly to any Loan Party

and remittances on credit card sales) into a Cash Management Account. Such cash management system shall be as in effect on the Petition Date and as required by the DIP Orders and as authorized by the Bankruptcy Court pursuant to orders approving the first day motions filed by Debtors and otherwise in compliance with this Agreement. The Administrative Agent and the Lenders hereby acknowledge and agree that the Cash Management Arrangements of the Loan Parties as of the Effective Date is reasonably acceptable. Upon the written request of the Administrative Agent (at the direction of the Required Lenders), Loan Parties shall cause bank statements and/or other reports to be delivered to the Administrative Agent (for delivery to the Lenders) not less often than monthly, accurately setting forth all amounts deposited in each Cash Management Account to ensure the proper transfer of funds as set forth above.

(b) [Reserved].

(c) [Reserved].

(d) So long as no Default or Event of Default has occurred and is continuing, the Borrowers may amend Schedule 8.01 to add or replace a Cash Management Bank or Cash Management Account; provided, however, that such prospective Cash Management Bank shall be reasonably satisfactory to the Collateral Agent and the Collateral Agent shall have consented in writing in advance to the opening of such Cash Management Account with the prospective Cash Management Bank.

## ARTICLE IX

### EVENTS OF DEFAULT

SECTION 9.01 Events of Default. Each of the following events shall constitute an event of default (each, an “Event of Default”):

(a) any Borrower shall fail to pay, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (i) any interest on any Loan or any fee, indemnity or other amount payable under this Agreement (other than any portion thereof constituting principal of the Loans) or any other Loan Document, and such failure continues for a period of 2 Business Days or (ii) all or any portion of the principal of the Loans;

(b) any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any certificate or other writing delivered to any Secured Party pursuant to any Loan Document shall have been incorrect in any material respect (or in any respect if such representation or warranty is qualified or modified as to materiality or “Material Adverse Effect” in the text thereof) when made or deemed made;

(c) any Loan Party shall fail to perform or comply with any covenant or agreement contained in:

(i) Section 4.07(c), Section 7.01(a), Section 7.01(d), Section 7.01(f), Section 7.01(k), Section 7.01(t), Section 7.01(u), Section 7.01(v) or Section 7.02, or Article VIII;

(ii) Section 7.01(c) or Section 7.01(h), and such failure, if capable of being remedied, shall remain unremedied for 2 Business Days after the earlier of the date a senior officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by an Agent to such Loan Party;

(iii) [reserved];

(d) any Loan Party shall fail to perform or comply with any other term, covenant or agreement contained in any Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 9.01, such failure, if capable of being remedied, shall remain unremedied for 20 days after the earlier of the date a senior officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party;

(e) any Loan Party shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any principal, interest or other amount payable in respect of any Material Indebtedness (excluding Indebtedness evidenced by this Agreement and excluding, for the avoidance of doubt, Indebtedness under the Prepetition First Lien Loan Documents and Prepetition Second Lien Loan Documents), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or any other default under any agreement or instrument relating to any such Indebtedness, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, and the maturity of such Indebtedness is accelerated as a result thereof; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case, prior to the stated maturity thereof;

(f) other than with respect to the Chapter 11 Cases, any Debtors (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall be generally not paying its debts as such debts become due or shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any action to authorize or effect any of the actions set forth above in this subsection (f);

(g) other than with respect to the Chapter 11 Cases, any proceeding shall be instituted against any Debtors seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of 30 days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against

any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur;

(h) any material provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any Loan Party that is a party thereto, or a proceeding shall be commenced by any Loan Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any Loan Document;

(i) subject in all respects to the Carve-Out, any security document or security provision in any Loan Document, after delivery thereof pursuant hereto, shall for any reason (other than the failure of the Agents or any Lender to make required filings or take required actions based on accurate information timely provided by the Loan Parties) fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any material portion of the DIP Collateral purported to be covered thereby;

(j) other than with respect to the CFPB Action, one or more judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of money exceeding \$1,000,000 in the aggregate shall be rendered against any Debtors and remain unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of 20 consecutive days after entry thereof during which (A) a stay of enforcement thereof is not in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal; provided, however, that any such judgment, order, award or settlement shall not give rise to an Event of Default under this subsection if and for so long as (1) the amount of such judgment, order, award or settlement in excess of \$1,000,000 is covered by a valid and binding policy of insurance between the applicable Person and the insurer covering full payment thereof (other than any deductible), and (2) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment, order, award or settlement;

(k) any Loan Party or any Subsidiary is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting, or otherwise ceases to conduct for any reason whatsoever, all or any material part of the businesses of the Loan Parties (taken as a whole) for more than 20 consecutive days if such injunction, restraint or other prevention could reasonably be expected to result in a Material Adverse Effect;

(l) any material damage to, or loss, theft or destruction of, any material portion of the DIP Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than 30 consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Loan Party, if any such event or circumstance could reasonably be expected to have a Material Adverse Effect;

(m) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party or any Subsidiary, if such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect;

(n) the indictment of any Loan Party under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party, pursuant to which statute or proceedings the penalties or remedies sought include forfeiture to any Governmental Authority of any material portion of the DIP Collateral of such Loan Party;

(o) (x)(i) there shall occur one or more ERISA Events that individually or in the aggregate results in, or could reasonably be expected to result in, liability of any Loan Party or any of its Subsidiaries or ERISA Affiliates in excess of \$1,000,000, or (ii) there exists any fact or circumstance that could reasonably be expected to result in the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 4068 of ERISA upon the property or rights to property of any Loan Party or any of its Subsidiaries or ERISA Affiliates or (y) any event similar to the foregoing occurs or exists with respect to a Foreign Plan;

(p) (i) there shall occur and be continuing any “Event of Default” (or any comparable term) under, and as defined in, any Material Indebtedness (other than the Prepetition First Lien Financing Agreement and the Prepetition Second Lien Financing Agreement) or (ii) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness;

(q) [reserved];

(r) a Change of Control shall have occurred;

(s) either of the Company or the Initial Transferor (in each case, as defined in the Transfer Agreement as of December 28, 2022) shall breach the Transfer Agreement in any material respect;

(t) other than a Known Event, there occurs an event that would have a Material Adverse Effect;

(u) the occurrence and continuance of any of the following in any Chapter 11 Case:

(A) termination of the Asset Purchase Agreement solely due to a breach thereunder by any Debtor;

(B) filing of a motion seeking approval of a sale pursuant to Section 363 of the Bankruptcy Code (other than as contemplated by the Asset Purchase Agreement) or a plan of reorganization or liquidation in any of the Chapter 11 Cases that, in either case, does not provide for indefeasible payment in full in cash to the Administrative Agent and Lenders of all Loans and all other Obligations and any other amounts outstanding pursuant to this Agreement and the DIP Orders on closing of such sale of the effective date of such plan;

(C) any of the Debtors shall file a pleading seeking to amend, vacate or modify any of the Loan Documents or DIP Orders over the objection of the Administrative Agent or the Administrative Agent at the direction of the Required Lenders;

(D) entry of an order without the prior written consent of the Administrative Agent (at the direction of Required Lenders) amending, supplementing or otherwise modifying DIP Orders;

(E) reversal, vacatur or stay of the effectiveness of the DIP Orders, which continues for five (5) Business Days;

(F) any violation of any material term of the DIP Orders by the Debtors;

(G) dismissal of any of the Chapter 11 Cases or conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking such dismissal or conversion of any bankruptcy case;

(H) the entry of an order by the Bankruptcy Court appointing, or the filing of a motion or application by any Debtor an order seeking the appointment of, in either case, without the prior consent of the Required Lenders, a Chapter 11 trustee or examiner with enlarged powers or any Debtor shall file a motion or other pleading seeking such appointment;

(I) any sale of all or substantially all assets of the Debtors pursuant to Section 363 of the Bankruptcy Code, unless such sale is conducted in accordance with the Bid Procedures and Bid Procedures Order and consented to by the Required Lenders;

(J) [reserved];

(K) granting of relief from the Automatic Stay by the Bankruptcy Court after notice and hearing in the Chapter 11 Cases to permit enforcement upon any Lien or foreclosure or enforcement on assets of the Borrowers or any Guarantor;

(L) the bringing of a motion or application by any Debtor in any of the Chapter 11 Cases, or the entry of any order by the Bankruptcy Court in any of the Chapter 11 Cases: (A) to obtain additional post-petition financing under section 364(c) or (d) of the Bankruptcy Code that does not provide for the indefeasible repayment of all Obligations under this Agreement and Prepetition Obligations under the Prepetition Financing Agreement in full in cash immediately upon the consummation of such financing without the prior written consent of the Required Lenders or (B) except as provided in this Agreement, the DIP Orders or otherwise consistent with the Budget (subject to Permitted Variances), to use cash collateral of the Agents and the Lenders under section 363(c) of the Bankruptcy Code or any equivalent provision of the relevant applicable law without the prior written consent of the Administrative Agent and the Required Lenders;

(M) an order shall be entered in any of the Chapter 11 Cases, without the prior written consent of the Administrative Agent at the direction of Required Lenders (i) to permit any administrative expense or any claim (now existing or hereafter arising of any kind or nature whatsoever) to have administrative priority equal or superior to the DIP Credit Facility Super-Priority Claims or (ii) granting or permitted grant of a lien that is equal in priority or senior to the DIP Liens (in each case other than the Carve-Out);

(N) the Debtors' filing of (or supporting another party in the filing of) a motion seeking entry of an order approving any key employee incentive plan, employee retention plan, or comparable plan, without the prior written consent of the Required Lenders;

(O) (1) the Debtors or any other person shall seek, or shall support any other person's motion seeking (in any such case, verbally in any court of competent jurisdiction or by way of any motion or pleading with the Bankruptcy Court, or any other writing to another party in interest by Debtors) to challenge the validity or enforceability of any of the DIP Lien, Obligations, Lien (as defined therein) or Prepetition Obligations of the parties under the Prepetition Loan Documents, including, but not limited to, seeking to prohibit, limit or restrict the right of the Prepetition First Lien Agent (on behalf of the Prepetition First Lien Lenders) to credit bid for any or all of the Debtors' assets, or (2) the Bankruptcy Court enters an order prohibiting, restricting, precluding, or otherwise impairing the unqualified right of the Agents or the Prepetition Agent (or their respective designees) from having the right to or being permitted to "credit bid" any amount of the Obligations or Prepetition Obligations, respectively, with respect to the assets of the Debtors;

(P) the Debtors shall assert in any pleading filed in any court that the guarantee contained in the Loan Documents is not valid and binding, for any reason, to be in full force and effect, other than pursuant to the terms hereof;

(Q) payment of (or application by any Debtor for authority to pay) or granting adequate protection with respect to prepetition Indebtedness, other than as provided herein or in the DIP Orders or relief sought in any "first motions" filed on the Petition Date as otherwise permitted herein (including in accordance with the Budget (subject to Permitted Variances));

(R) expiration or termination of the period provided by section 1121 of the Bankruptcy Code for the exclusive right to file a plan, with respect to a Debtor unless such expiration or termination was sought by the Administrative Agent at the direction of the Required Lenders;

(S) the Bankruptcy Court's determination of the cessation of the DIP Liens or the DIP Credit Facility Super-Priority Claims to be valid, perfected and enforceable in all respects;

(T) Permitted Variances under the Budget are exceeded for any period of time without consent of or waiver by the Administrative Agent at the direction of the Required Lenders;

(U) any uninsured judgments are entered with respect to any post-petition non-ordinary course claims against any of the Debtors or any of their respective affiliates in a combined aggregate amount in excess of \$25,000 unless stayed;

(V) any Debtor asserting any right of subrogation or contribution against any other Debtor until all borrowings under the DIP Facility are paid in full in cash and the commitments are terminated;

(W) subject to entry of the Final DIP Order, the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against any Lender;

(X) the commencement of a suit or action against any Lender and, as to any suit or action brought by any person other than any Debtor or an officer or employee of any Debtor, the continuation thereof without dismissal for thirty (30) days after service thereof on the Lenders, that asserts or seeks by or on behalf of the Debtors, any Committee or any other party in interest in any of the Chapter 11 Cases, a claim or any legal or equitable remedy that would (i) have the effect of subordinating any or all of the Obligations or DIP Liens of the Lenders under the Loan Documents to any other claim, or (ii) have a material adverse effect on the rights and remedies of the Administrative Agent and/or the Lenders under any Loan Document or the collectability of all or any portion of the Obligations;

(Y) the entry of an order in any bankruptcy case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;

(Z) an order shall have been entered by the Bankruptcy Court prohibiting, limiting or restricting the right of the Administrative Agent (on behalf of the Lenders) or the Prepetition First Lien Agent (on behalf of the Prepetition First Lien Lenders) to credit bid for any or all of the Debtors' assets;

(AA) the payment of, or application by any Debtor for authority to pay, any prepetition claim, via a "first-day" order or otherwise, other than (i) as consented to by the Required Lenders, (ii) as authorized by the Budget (including Permitted Variances), (iii) permitted under the terms of this Agreement or (iv) as authorized by the Bankruptcy Court or the DIP Orders and otherwise permitted in the Budget;

(BB) any event, development, state of facts, change, circumstance, occurrence, condition or effect occurring after the Petition Date that relates to or arises from the CFPB Action and that, either individually or in the aggregate: has had or could reasonably be expected to have an adverse effect on any of (i) the

operations, assets, liabilities or financial condition of the Loan Parties taken as a whole, (ii) the ability of the Loan Parties to perform any of their payment obligations, or any other obligation, under any Loan Document or the DIP Orders, (iii) the legality, validity or enforceability of the DIP Facility, (iv) the rights and remedies of any Agent or any Lender under the Loan Documents or DIP Orders and (v) the validity, perfection or priority of a Lien in favor of the Collateral Agent for the benefit of the Lenders; and

(CC) any settlement of the CFPB Action that is not consented to by the Administrative Agent at the direction of the Required Lenders.

Then, subject to the terms and conditions of the DIP Orders, and in any such event, the Collateral Agent may, and shall at the request of the Required Lenders, by notice to the Administrative Representative, (i) terminate or reduce all Commitments, whereupon all Commitments shall immediately be so terminated or reduced, (ii) terminate all use of the Debtors' use of any Cash Collateral, (iii) freeze all monies or balances in the Debtors' accounts and sweep all funds contained Controlled Accounts, (iv) immediately set-off any and all amounts in accounts maintained by the Debtors with any of the Agents or the Lenders or otherwise enforce any and all rights against the Collateral in the possession of any of the Agents or Lenders, (v) declare all or any portion of the Loans then outstanding to be accelerated and due and payable, whereupon all or such portion of the aggregate principal of all Loans, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, with respect to the Commitments so terminated and the Loans so repaid, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party; and (vi) exercise any and all of its other rights and remedies under applicable law, hereunder and under the other Loan Documents and DIP Order; provided, however, that the Agents and Lenders shall provide the Debtors with five (5) days prior written notice (which may be by email) before exercising any enforcement rights or remedies (the "Remedies Notice Period"). The Debtors shall cooperate fully with the Agents and Lenders in their exercise of rights and remedies, whether against the Collateral or otherwise. Notwithstanding anything herein to the contrary, during the Remedies Notice Period, the Debtors shall have the right to challenge the existence or occurrence of an Event of Default (and no other matters) by seeking emergency relief from the Bankruptcy Court. If the Bankruptcy Court finds that an Event of Default has occurred and is continuing, the Lenders' right to enforce the remedies provided for herein and in the DIP Orders shall be subject to satisfaction of the obligations occasioned by the issuance of a [Carve Out Trigger Notice].

## ARTICLE X

### AGENTS

SECTION 10.01 Appointment. Each Lender (and each subsequent maker of any Loan by its making thereof) hereby irrevocably appoints, authorizes and empowers the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto, including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loans outstanding hereunder and all other amounts accrued

hereunder for the account of the Lenders and paid to such Agent, and to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by such Agent and not required to be delivered to each Lender pursuant to the terms of this Agreement, *provided* that the Agents shall not have any liability to the Lenders for any Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the DIP Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Loan Document; (v) to make the Loans, for such Agent or on behalf of the applicable Lenders as provided in this Agreement or any other Loan Document; (vi) to perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Loan Document; (vii) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; (viii) subject to Section 10.03, to take such action as such Agent deems appropriate on its behalf to administer the Loans and the Loan Documents and to exercise such other powers delegated to such Agent by the terms hereof or the other Loan Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations); and (ix) to act with respect to all DIP Collateral under the Loan Documents, including for purposes of acquiring, holding and enforcing any and all Liens on DIP Collateral granted by any of the Loan Parties to secure any of the Obligations. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including, without limitation, enforcement or collection of the Loans), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) shall be binding upon all Lenders and all makers of Loans; provided, however, that the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law. The Lenders hereby acknowledge and agree that the Collateral Agent may act, as the Collateral Agent for the Lenders.

SECTION 10.02 Nature of Duties; Delegation. (a) The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Loan Documents. The duties of the Agents shall be mechanical and administrative in nature. The Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the

Loan Parties in connection with the making and the continuance of the Loans hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the DIP Collateral without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and neither the Agents nor any of their Related Parties shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into their possession before the initial Loan hereunder or at any time or times thereafter, *provided* that, upon the reasonable request of a Lender, each Agent shall provide to such Lender any documents or reports delivered to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Loan Document. If any Agent seeks the consent or approval of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Lender. Each Agent shall promptly notify each Lender any time that the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) have instructed such Agent to act or refrain from acting pursuant hereto.

(b) Each Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any of its Related Parties or any other trustee, co-agent or other Person (including any Lender). Any such Related Party, trustee, co-agent or other Person shall benefit from this Article X to the extent provided by the applicable Agent.

SECTION 10.03 Rights, Exculpation, Etc. The Agents and their Related Parties shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Loan Documents, except for their own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Loan as the owner thereof until the Collateral Agent receives written notice of the assignment or transfer thereof, pursuant to Section 12.07 hereof, signed by such payee and in form satisfactory to the Collateral Agent; (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the DIP Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectability of the DIP Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any

portion of the DIP Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 4.03, and if any such apportionment or distribution is subsequently determined to have been made in error, and the sole recourse of any Lender to whom payment was due but not made shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents the Agents are permitted or required to take or to grant, and if such instructions are promptly requested, the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until they shall have received such instructions from the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents). Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents).

**SECTION 10.04 Reliance.** Each Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

**SECTION 10.05 Indemnification.** To the extent that any Agent or any Related Party of the foregoing is not reimbursed and indemnified by any Loan Party, and whether or not such Agent has made demand on any Loan Party for the same, the Lenders will, within five days of written demand by such Agent, reimburse such Agent and such Related Parties for and indemnify such Agent and such Related Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, client charges and expenses of counsel or any other advisor to such Agent and such Related Parties), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent and the Related Parties in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by such Agent and such Related Parties under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 10.08; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from such Agent's or such Related Party's gross negligence or willful misconduct. The obligations of the Lenders under this Section 10.05 shall survive the payment in full of the Loans and the termination of this Agreement.

**SECTION 10.06 Agents Individually.** With respect to its Pro Rata Share of the Total Commitment hereunder and the Loans made by it, each Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or maker of a Loan. The terms "Lenders" or "Required Lenders" or any similar terms shall, unless the context clearly otherwise indicates,

include each Agent in its individual capacity as a Lender or one of the Required Lenders. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with any Borrower as if it were not acting as an Agent pursuant hereto without any duty to account to the other Lenders.

SECTION 10.07 Successor Agent. (a) Any Agent may at any time give at least 30 days prior written notice of its resignation to the Lenders and the Administrative Representative. Upon receipt of any such notice of resignation, the Required Lenders, with the consent of the Parent (such consent not to be unreasonably withheld, delayed or conditioned and shall not be required during the continuance of an Event of Default) shall have the right to appoint a successor Agent. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any DIP Collateral held by such Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such DIP Collateral security until such time as a successor Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Lender directly, until such time, if any, as a successor Agent shall have been appointed as provided for above. Upon the acceptance of a successor's Agent's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article, Section 12.04 and Section 12.15 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

SECTION 10.08 DIP Collateral Matters.

(a) [Reserved].

(b) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any DIP Collateral upon termination of the Total Commitment and payment and satisfaction of all Loans and all other Obligations (other than Contingent Indemnity Obligations) in accordance with the terms hereof; or constituting property being sold or disposed of in the ordinary course of any Loan Party's business or otherwise in compliance with the terms of this Agreement and the other Loan Documents; or constituting property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Lenders in accordance with Section 12.02. Upon request by the Collateral Agent at any time, the

Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of DIP Collateral pursuant to this Section 10.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders (as set forth in Section 10.08(b)), each Lender agrees to confirm in writing, upon request by the Collateral Agent, the authority to release DIP Collateral conferred upon the Collateral Agent under Section 10.08(b). Upon receipt by the Collateral Agent of confirmation from the Lenders of its authority to release any particular item or types of DIP Collateral, and upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents and the Lenders upon such DIP Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the DIP Collateral retained by any Loan Party.

(d) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, each Agent and each Lender hereby agree that no Lender shall have any right individually to realize upon any of the DIP Collateral under any Loan Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof.

(e) The Collateral Agent shall have no obligation whatsoever to any Lender to assure that the DIP Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 10.08 or in any other Loan Document, it being understood and agreed that in respect of the DIP Collateral, or any act, omission or event related thereto, the Collateral Agent may act with the consent or at the direction of the Required Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein.

(f) Nothing contained herein shall be deemed to authorize any Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization or liquidation, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize any Agent to vote in respect of the claim of any Lender in any such proceeding.

SECTION 10.09 Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the DIP Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest

of another secured party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such DIP Collateral for the benefit of the Agents and the Lenders as secured party. Should the Administrative Agent or any Lender obtain possession or control of any such DIP Collateral, the Administrative Agent or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such DIP Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the DIP Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

SECTION 10.10 No Reliance on any Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 C.F.R. §§ 1010.100(yy), (iii), 1020.100, and 1020.220 (formerly 31 C.F.R. § 103.121), as hereafter amended or replaced (“CIP Regulations”), or any other Anti-Money Laundering Laws, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each Lender, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

SECTION 10.11 No Third Party Beneficiaries. The provisions of this Article are solely for the benefit of the Secured Parties (except with respect to (i) the Parent's consent right to the appointment of successor Agents under Section 10.07, (ii) the retiring Agent's obligation to continue to hold DIP Collateral as set forth in Section 10.07(b), (iii) the Collateral Agent's obligation to release liens under Section 10.08(b) and (iv) the Loan Parties' rights in 10.01, 10.08, 10.09 and 10.17), and, other than as set forth herein, no Loan Party shall have rights as a third-party beneficiary of any of such provisions.

SECTION 10.12 No Fiduciary Relationship. It is understood and agreed that the use of the term “agent” herein or in any other Loan Document (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

SECTION 10.13 Reports; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that each Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report with respect to the Debtors

(each, a “Report”) prepared by or at the request of such Agent, and each Agent shall so furnish each Lender with each such Report,

(b) expressly agrees and acknowledges that the Agents (i) do not make any representation or warranty as to the accuracy of any Reports, and (ii) shall not be liable for any information contained in any Reports,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any Agent or other party performing any audit or examination will inspect only specific information regarding the Debtors and will rely significantly upon the Debtors’ books and records, as well as on representations of their personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Debtors and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 12.19, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrowers, and (ii) to pay and protect, and indemnify, defend and hold any Agent and any other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by any such Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender

SECTION 10.14 DIP Collateral Custodian. Upon the occurrence and during the continuance of any Default or Event of Default, the Collateral Agent or its designee may at any time and from time to time employ and maintain on the premises of any Loan Party a custodian selected by the Collateral Agent or its designee who shall have full authority to do all acts necessary to protect the Agents' and the Lenders' interests. Each Loan Party hereby agrees to, and to cause its Subsidiaries to, cooperate with any such custodian and to do whatever the Collateral Agent or its designee may reasonably request to preserve the DIP Collateral. All costs and expenses incurred by the Collateral Agent or its designee by reason of the employment of the custodian shall be the responsibility of the Borrowers and charged to the Loan Account.

SECTION 10.15 [Reserved].

SECTION 10.16 [Reserved].

SECTION 10.17 Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due to the Secured Parties hereunder and under the other Loan Documents) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to the Collateral Agent and, in the event that the Collateral Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent hereunder and under the other Loan Documents.

SECTION 10.18 Erroneous Distribution. If all or any part of any payment or other distribution by or on behalf of the Administrative Agent to any Borrower, Lender, or other Person is determined by the Administrative Agent in its sole reasonable discretion to have been made in error as determined by the Administrative Agent (any such distribution, an “Erroneous Distribution”), then the relevant Borrower, Lender, or other Person shall forthwith on written demand (accompanied by a reasonably detailed calculation of such Erroneous Distribution) repay to the Administrative Agent the amount of such Erroneous Distribution received by such Person. Any determination by the Administrative Agent, in its sole discretion, that all or a portion of any distribution to a Borrower, Lender, or other Person was an Erroneous Distribution shall be conclusive absent manifest error. Each Debtor, Lender, and other potential recipient of an Erroneous Distribution hereunder waives any claim of discharge for value and any other claim of entitlement to, or in respect of, any Erroneous Distribution.

## ARTICLE XI

### GUARANTY

SECTION 11.01 Guaranty. Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrowers now or hereafter existing under any Loan Document, whether for principal, interest (including, without limitation, all interest that accrues after the commencement of any Insolvency Proceeding of any Borrower, whether or not a claim for post-filing interest is allowed in such Insolvency Proceeding), fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrowers, being the “Guaranteed Obligations”), and, to the extent consistent with the requirements of Section 12.04, agrees to pay any and all reasonable and documented out-of-pocket expenses (including reasonable and documented out-of-pocket counsel fees and expenses) incurred by the Secured Parties in enforcing any rights under the guaranty set forth in this Article XI. Without limiting the generality of the foregoing, each Guarantor's liability

shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrowers to the Secured Parties under any Loan Document but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving any Borrower. In no event shall the obligation of any Guarantor hereunder exceed the maximum amount such Guarantor could guarantee under any Debtor Relief Law.

SECTION 11.02 Guaranty Absolute. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Parties with respect thereto. Each Guarantor agrees that this Article XI constitutes a guaranty of payment when due and not of collection and waives, to the extent permitted by applicable law, any right to require that any resort be made by any Agent or any Lender to any DIP Collateral. The obligations of each Guarantor under this Article XI are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article XI shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives, to the extent permitted by applicable law, any defenses (other than the defense of payment in full or performance) it may now or hereafter have in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or otherwise;

(c) any taking, exchange, release or non-perfection of any DIP Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) the existence of any claim, set-off, defense (other than the defense of payment in full) or other right that any Guarantor may have at any time against any Person, including, without limitation, any Secured Party;

(e) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Loan Party; or

(f) any other circumstance (other than the defense of payment in full or performance, but including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Secured Parties that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Article XI shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by

Secured Parties or any other Person upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise, all as though such payment had not been made.

SECTION 11.03 Waiver. Each Guarantor hereby waives, to the extent permitted by applicable law, (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article XI and any requirement that the Secured Parties exhaust any right or take any action against any Loan Party or any other Person or any DIP Collateral, (iii) any right to compel or direct any Secured Party to seek payment or recovery of any amounts owed under this Article XI from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any DIP Collateral, (iv) any requirement that any Secured Party protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any DIP Collateral, and (v) any other defense (other than the defense of payment in full or performance) available to any Guarantor. Each Guarantor agrees that the Secured Parties shall have no obligation to marshal any assets in favor of any Guarantor or against, or in payment of, any or all of the Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 11.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives, to the fullest extent permitted by applicable law, any right to revoke this Article XI, and acknowledges that this Article XI is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

SECTION 11.04 Continuing Guaranty; Assignments. This Article XI is a continuing guaranty and shall (a) remain in full force and effect until the cash payment in full of the Guaranteed Obligations (other than Contingent Indemnity Obligations), (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their successors, pledgees, transferees and permitted assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, its Loans owing to it) to any other Person to the extent permitted hereunder, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 12.07.

SECTION 11.05 Subrogation. No Guarantor will exercise any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Article XI, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Secured Parties against any Loan Party or any other guarantor or any DIP Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Loan Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than Contingent Indemnity Obligations) have been paid in full in cash and the DIP Termination Date shall have occurred. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of the payment in full in cash of the

Guaranteed Obligations (other than Contingent Indemnity Obligations) and the DIP Termination Date, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article XI, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as DIP Collateral for any Guaranteed Obligations or other amounts payable under this Article XI thereafter arising. If (i) any Guarantor shall make payment to the Secured Parties of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article XI shall be paid in full in cash and (iii) the DIP Termination Date shall have occurred, the Secured Parties will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

SECTION 11.06 Release of Guarantors. If, in compliance with the terms and provisions of the Loan Documents, (i) all or substantially all of the Equity Interests of any Guarantor are sold or otherwise transferred to a Person or Persons none of which is a Loan Party in a transaction permitted hereunder or (ii) any Guarantor ceases to be a Subsidiary as a result of a transaction or designation permitted hereunder (any such Guarantor, and any Guarantor referred to in clause (i), a "Transferred Guarantor"), such Transferred Guarantor shall, upon the consummation of such sale or transfer or other transaction (but subject to the proviso below), be automatically released from its obligations under this Agreement (including under Section 12.15 hereof) and the other Loan Documents, including its obligations to pledge and grant any DIP Collateral owned by it pursuant to any Loan Document and, in the case of a sale of all or substantially all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Collateral Agent pursuant to the Loan Documents shall be automatically released, and, so long as the Loan Parties shall have provided the Agents such certifications or documents as any Agent shall reasonably request, the Collateral Agent shall take such actions as are necessary to effect each release described in this Section 11.06 in accordance with the relevant provisions of the Loan Documents.

SECTION 11.07 Contribution. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 11.07, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation,

reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 11.07), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 11.07. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 11.07 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 11.07.

## ARTICLE XII

### MISCELLANEOUS

#### SECTION 12.01 Notices, Etc.

(a) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be delivered by hand, sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, or telecopier. In the case of notices or other communications to any Loan Party, Administrative Agent or the Collateral Agent, as the case may be, they shall be sent to the respective address set forth below (or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01):

PGX Holdings, Inc.  
257 East 200 South  
Salt Lake City, UT 84111  
Attention: Chief Financial Officer  
Telephone: 801-384-4248  
Telecopier: 801-936-0861  
Email: cwallace@progrexion.com

Prospect Capital Corporation  
10 East 40th Street, 42nd Floor  
New York, New York 10016  
Attention: General Counsel and Jason Wilson  
Facsimile No.: 212-448-9652  
Email: fax@prospectcap.com  
pl@prospectcap.com  
pacct@prospectcap.com  
jwilson@prospectcap.com  
grier@prospectcap.com  
jbarry@prospectcap.com

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

Proskauer Rose LLP  
One International Place  
Boston, MA 02110-2600  
Attention: Peter J. Antoszyk; Scott Patrick Thurman  
Email: PAntoszyk@proskauer.com; SThurman@proskauer.com  
Phone: (617) 526-9749; (212) 969-3374

if to the Administrative Agent or the Collateral Agent, to it at the following address:

Blue Torch Finance LLC  
c/o Blue Torch Capital LP  
150 East 58<sup>th</sup> Street, 39<sup>th</sup> Floor

New York, New York 10155  
Email: BlueTorchAgency@alterdomus.com

with a copy to:

SEI – Blue Torch Capital Loan Ops  
1 Freedom Valley Drive  
Oaks, Pennsylvania 19456  
Telecopier: (469) 709-1839  
Email: bluetorch.loanops@seic.com

in each case, with a copy (which shall not constitute notice) to:

Blue Torch Finance LLC  
c/o Blue Torch Capital LP  
150 East 58<sup>th</sup> Street, 39<sup>th</sup> Floor  
New York, New York 10155  
Attention: Lee Haspel, Logan Fisher  
Email: [lhaspel@bluetorchcapital.com](mailto:lhaspel@bluetorchcapital.com); [lfisher@bluetorchcapital.com](mailto:lfisher@bluetorchcapital.com)

King & Spalding LLP  
1185 Avenue of the Americas  
New York, NY 10036  
Attention: Jennifer E. Daly  
Email: jdaly@kslaw.com  
Phone: (212) 556-2196

All notices or other communications sent in accordance with this Section 12.01, shall be deemed received on the earlier of the date of actual receipt or three (3) Business Days after the deposit

thereof in the mail; provided, that (i) notices sent by overnight courier service shall be deemed to have been given when received and (ii) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), provided, further, that notices to any Agent pursuant to Article II shall not be effective until received by such Agent.

(b) Electronic Communications.

(i) Each Agent and the Administrative Representative may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Agents, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agents that it is incapable of receiving notices under such Article by electronic communication.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received 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), and (B) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

SECTION 12.02 Amendments, Etc. (a) No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Agents and the Lenders or extending an existing Lien over additional property, by the Agents and the Borrowers (or by the Administrative Representative on behalf of the Borrowers), (y) in the case of any other waiver or consent, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and (z) in the case of any other amendment, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and the Borrowers (or by the Administrative Representative on behalf of the Borrowers), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that copies of any amendment, waiver or consent shall be provided to the Administrative Agent; provided, further, however, that no amendment, waiver or consent shall:

(i) Increase or reinstate the Commitment of any Lender, reduce the principal of, or interest on, the Loans payable to any Lender, reduce the amount of any fee payable for the account of any Lender, or postpone or extend any scheduled date fixed for any payment of principal of, or interest or fees on, the Loans payable to any Lender, in each case, without the written consent of such Lender;

(ii) increase the Total Commitment without the written consent of each Lender;

(iii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders or any of them to take any action hereunder without the written consent of each Lender;

(iv) amend the definition of “Required Lenders” or “Pro Rata Share” without the written consent of each Lender;

(v) release all or substantially all of the DIP Collateral (except as otherwise provided in this Agreement and the other Loan Documents, in each case, as in effect on the Effective Date), subordinate the Obligations in right of payment to any other Indebtedness, subordinate any DIP Lien granted in favor of the Collateral Agent for the benefit of the Agents and the Lenders on all or substantially all of the DIP Collateral, or release any Borrower or any Guarantor, in each case, without the written consent of each Lender; provided, that the Required Lenders may elect to release all or a substantial portion of the DIP Collateral without the requirement to obtain the written consent of each Lender if such release is in connection with (x) an exercise of remedies by the Collateral Agent at the direction of the Required Lenders pursuant to Section 9.01 or (y) any Disposition of all or a substantial portion of the DIP Collateral by one or more of the Loan Parties with the consent of the Required Lenders after the occurrence and during the continuance of an Event of Default so long as such Disposition is conducted in a commercially reasonable manner as if such Disposition were a disposition of DIP Collateral by a secured creditor in accordance with Article IX of the UCC; or

(vi) amend, modify or waive Section 4.02, Section 4.03, Section 4.08, or this Section 12.02 of this Agreement without the written consent of each Lender.

(b) Notwithstanding anything to the contrary in Section 12.02(a):

(i) no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Lender) under this Agreement or the other Loan Documents;

(ii) [reserved];

(iii) [reserved];

(iv) no consent of any Loan Party shall be required to change any order of priority set forth in Section 2.05(d) and Section 4.03(b) with respect to application of payments when an Event of Default has occurred and is continuing;

(v) the Administrative Agent and the Administrative Representative may enter into an amendment to this Agreement pursuant to Section 2.07 to reflect an alternate service or index rate and such other related changes to this Agreement as may be applicable;

(vi) no (x) Defaulting Lender, (y) Loan Party or (z) equity holder of the Parent (other than Prospect and its Affiliates and Related Funds, each of who, for the avoidance of doubt, shall not be subject to this clause (vi)(z)), or any Affiliate of any Person identified in the foregoing clauses (x) – (z) that is a Lender shall have any right to approve or disapprove any amendment, waiver or consent under the Loan Documents and any Loans held by such Person for purposes hereof shall be automatically deemed to be voted pro rata according to the Loans of all other Lenders in the aggregate (other than such Defaulting Lender, Loan Party, or equity holder of the Parent or Affiliate); and

(vii) [Reserved].

(c) If any action to be taken by the Lenders hereunder requires the consent, authorization, or agreement of all of the Lenders or any Lender affected thereby, and a Lender other than the Collateral Agent and the Administrative Agent and their respective Affiliates (the “Holdout Lender”) fails to give its consent, authorization, or agreement, then the Collateral Agent, upon at least five (5) Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute lenders (each, a “Replacement Lender”), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 12.07. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make its Pro Rata Share of Loans.

(d) [Reserved].

SECTION 12.03 No Waiver; Remedies, Etc. No failure on the part of any Agent or any Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Lenders provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Lenders under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agents and the Lenders to exercise any of their rights under any other Loan Document against such party or against any other Person.

SECTION 12.04 Expenses; Attorneys' Fees. The Borrowers agree to pay or reimburse all reasonable and documented out-of-pocket costs and expenses incurred by or on behalf of the Agents and (to the extent set forth below) certain of the Lenders, including, without limitation, (i) reasonable fees, documented out-of-pocket costs, client charges and expenses of counsel for the Agents and (to the extent set forth below) certain of the Lenders, respectively (limited to the reasonable and documented fees and expenses of one primary outside counsel to the Agents, King & Spalding; one primary outside counsel to certain Lenders, Proskauer Rose LLP; and, if necessary, one local counsel in each relevant jurisdiction material to the interests of the Lenders (which, in each case, may include a single special counsel acting in multiple jurisdictions, and for the avoidance of doubt, shall include Clyde and Co.), any regulatory or other special counsel to the Agents reasonably deemed necessary by the Agents and, in the event of any reasonably perceived or actual conflict of interest, one additional counsel of each relevant type to the affected parties), and, any other professional advisors retained by the Administrative Agent at the direction of Required Lenders and (ii) reasonable and documented fees, out-of-pocket costs, client charges and expenses of counsel for each Agent and Prospect, respectively, accounting, due diligence, periodic field audits, physical counts, valuations, investigations, searches and filings, monitoring of assets, appraisals of DIP Collateral, the rating of the Loans, title searches, and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals, arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of the DIP Orders, this Agreement and the other Loan Documents (including, without limitation, the preparation of any additional Loan Documents pursuant to this Agreement or the DIP Orders or the review of any of the agreements, instruments and documents referred to in Section 7.01(f) or the DIP Orders), (b) any requested amendments, waivers or consents to the DIP Orders, this Agreement or the other Loan Documents whether or not such documents become effective or are given, and (c) the preservation and protection of the Agents' or any of the Lenders' rights under this Agreement, the other Loan Documents or the DIP Orders, (d) the defense of any claim or action asserted or brought against any Agent or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the DIP Orders, the Agents' or the Lenders' claims against any Loan Party, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement, any other Loan Document or the DIP Orders, including (x) the Chapter 11 Cases and (y) defending and prosecuting any actions or proceedings arising out of or relating to the Prepetition Obligations, the Obligations, the liens securing the Prepetition Obligations and the Obligations, or any transaction related to or arising in connection with the Prepetition Loan Documents, this Agreement or the other Loan Documents (in the case of the Prepetition Obligations and the liens securing the Prepetition Obligations, to the extent provided in the Prepetition Loan Documents), (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent or any Lender, or the taking of any action in respect of the DIP Collateral or other security, in connection with this Agreement, any other Loan Document or the DIP Orders, (g) the protection, collection, lease, sale, taking possession of or liquidation of, any DIP Collateral or other security in connection with this Agreement, any other Loan Document or the DIP Orders, (h) any attempt to enforce any Lien or security interest in any DIP Collateral or other security in connection with this Agreement, any other Loan Document or the DIP Orders, (i) any attempt to collect from any Loan Party, (j) any Environmental Claim, Environmental Liability or Remedial Action arising from or in connection with the past, present or future operations of, or any property currently, formerly or in the future owned by, any Loan Party, or any of its Subsidiaries, (k) any

Environmental Lien, (l) the rating of the Loans by one or more rating agencies in connection with any Lender's Securitization, or (m) the receipt by any Agent or any Lender of any advice from professionals with respect to any of the foregoing and (2) to pay or reimburse all reasonable and documented out-of-pocket costs and expenses incurred by the Agents and each Lender, including the expenses of counsel for the Agents and Lenders (limited to the reasonable and documented fees and out-of-pocket expenses of one primary outside counsel to the Agents and the Lenders and one outside counsel to Prospect, and, if necessary, one local counsel in each relevant jurisdiction material to the interests of the Lenders (which, in each case, may include a single special counsel acting in multiple jurisdictions), any regulatory or other special counsel to the Agents reasonably deemed necessary by the Agents and, in the event of any reasonably perceived or actual conflict of interest, one additional counsel of each relevant type to the affected parties) in connection with the foregoing clauses (c)-(m). Without limitation of the foregoing or any other provision of any Loan Document or the DIP Orders: (x) the Borrowers agree to pay all broker fees that may become due in connection with the transactions contemplated by this Agreement, the other Loan Documents and the DIP Orders and (y) if the Borrowers fail to perform any covenant or agreement contained herein, in any other Loan Document or the DIP Orders, any Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such Agent incurred in connection therewith shall be reimbursed on demand by the Borrowers. The obligations of the Borrowers under this Section 12.04 shall survive the repayment of the Obligations and discharge of any DIP Liens granted under the Loan Documents or DIP Orders.

SECTION 12.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent or any Lender may, and is hereby authorized to, at any time and from time to time, subject to the terms of the Interim DIP Order and Final DIP Order and to the fullest extent permitted by law, set off and apply any and all deposits in accounts that constitute DIP Collateral (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent or such Lender or any of their respective Affiliates to or for the credit or the account of any Loan Party against any and all obligations of the Loan Parties either now or hereafter existing under any Loan Document, irrespective of whether or not such Agent or such Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of set-off, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.04 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agents and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of set-off. Each Agent and each Lender agrees to notify such Loan Party promptly after any such set-off and application made by such Agent or such Lender or any of their respective Affiliates; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Lenders may have under this Agreement or any other Loan Documents of law or otherwise.

SECTION 12.06 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such

prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 12.07 Assignments and Participations.

(i) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each Agent and each Lender and their respective successors and permitted assigns; provided, however, that none of the Loan Parties may assign or transfer any of its rights hereunder or under the other Loan Documents without the prior written consent of each Lender and any such assignment without the Lenders' prior written consent shall be null and void.

(a) Subject to the conditions set forth in clause (c) below, each Lender may assign to one or more other lenders or other entities all or a portion of its rights and obligations under this Agreement with respect to all or a portion of its Commitment and any Loan made by it with the written consent of the Collateral Agent and the Administrative Agent; provided, however, that no written consent of the Collateral Agent or the Administrative Agent shall be required (A) in connection with any assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Lender; provided that if required, consent of Administrative Agent or Collateral Agent, as applicable, shall not be unreasonably withheld, delayed or conditioned;

(b) Assignments shall be subject to the following additional conditions:

(i) Each such assignment shall be in an amount which is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof (or the remainder of such Lender's Commitment) (except such minimum amount shall not apply to an assignment by a Lender to (A) a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000 or a multiple of \$1,000,000 in excess thereof); and

(ii) The parties to each such assignment shall execute and deliver to the Collateral Agent (and the Administrative Agent, if applicable), for its acceptance, an Assignment and Acceptance, together with any promissory note subject to such assignment and such parties shall deliver to the Collateral Agent, for the benefit of the Collateral Agent, a processing and recordation fee of \$5,000 (except the payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender) and all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering or terrorist financing rules and regulations, including the USA PATRIOT Act;

(iii) No such assignment shall be made to (A)(x) any Loan Party, (y) any equity holder of the Parent (other than Prospect and its Affiliates and Related Funds, each of who, for the avoidance of doubt, shall not be subject to this clause (iii)(y)), or (z) any Affiliate

of a Person identified in the foregoing clauses (A)(x) and (A)(y), (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) any Disqualified Institution; and

(iv) The assignee shall join the Restructuring Support Agreement as a party thereto, and be subject to the terms of, the Restructuring Support Agreement in all respects.

(c) Upon such execution, delivery and acceptance, from and after the recordation date of each Assignment and Acceptance on the Register, (A) the assignee thereunder shall become a “Lender” hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(d) By executing and delivering an Assignment and Acceptance, the assigning Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning Lender, any Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(e) The Administrative Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain, or cause to be maintained at the Payment Office, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the “Register”) for the recordation of the names and addresses of the Lenders and the Commitments of, and the principal

amount of the Loans (and stated interest thereon) (the “Registered Loans”) owing to each Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrowers, the Agents and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Administrative Representative and any Lender at any reasonable time and from time to time upon reasonable prior written notice.

(f) Upon receipt by the Administrative Agent of a completed Assignment and Acceptance, and subject to any consent required from Administrative Agent or the Collateral Agent pursuant to Section 12.07(b) (which consent of the applicable Agent must be evidenced by such Agent's execution of an acceptance to such Assignment and Acceptance), the Administrative Agent shall accept such assignment, record the information contained therein in the Register (as adjusted to reflect any principal payments on or amounts capitalized and added to the principal balance of the Loans and/or Commitment reductions made subsequent to the effective date of the applicable assignment, as confirmed in writing by the corresponding assignor and assignee in conjunction with delivery of the assignment to the Administrative Agent) and provide to the Collateral Agent a copy of the fully executed Assignment and Acceptance.

(g) A Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register or the Participant Register (and each registered note shall expressly so provide). Any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register or the Participant Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s).

(h) If any Lender sells participations in a Registered Loan, such Lender shall, acting for this purpose as a non-fiduciary agent on behalf of the Borrowers, maintain, or cause to be maintained, a register, on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant’s interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any,

evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Administrative Representative and any Lender at any reasonable time and from time to time upon reasonable prior notice. This Section 12.07(i) shall be construed so that the Loans, any Commitments or other obligations are at all times maintained in “registered form” within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code and any related United States Treasury Regulations (and any successor provisions).

(i) Any Non-U.S. Lender who purchases or is assigned or participates in any portion of such Registered Loan shall comply with Section 2.09(d).

(j) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitments and the Loans made by it); provided, that (i) such Lender's obligations under this Agreement (including without limitation, its Commitments hereunder) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrowers, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents; and (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loans, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loans or the fees payable under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the DIP Collateral or any Loan Party (except as set forth in Section 10.08 of this Agreement or any other Loan Document) and (iv) no such participation shall be made to a Disqualified Institution. The Loan Parties agree that each participant that is not yet a Lender with respect to the assigned interest shall be entitled to the benefits of Sections 2.09 and 2.10 with respect to its participation in any portion of the Commitments and the Loans as if it was a Lender (subject to (i) the respective limitations set forth therein, (ii) the Parent being notified of such participation prior to giving effect thereto and (iii) such participants express agreement to comply with the terms hereof); provided that a participant shall not be entitled to receive any greater payment under such Sections than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless (i) such greater payment is due to a Change in Law that occurs after the date upon which such participant acquires the applicable participation or (ii) [reserved], and provided, further that a participant shall not be entitled to the benefits of Section 2.09 unless the documentation required by Section 2.09(d) is delivered by the participant to the participating Lender.

(k) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or loans made to, or other indebtedness issued by, such Lender pursuant to a securitization transaction (including any structured warehouse credit facility, collateralized loan obligation transaction or similar facility or transaction, and including any further securitization of the indebtedness or equity issued under such a transaction) (a “Securitization”); provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a

party hereto. The Loan Parties shall cooperate with such Lender and its Affiliates to effect a Securitization, including, without limitation, by providing such information as may be reasonably requested by such Lender in connection with the rating of its Loans or any Securitization.

(l) For avoidance of doubt, the Lenders may assign any or all of their rights or obligations under this Agreement at any time, to any other person without the consent of any Loan Party. Each Lender shall have the right to sell participations in its Loans, subject to any limitations set forth herein or in the Loan Documents.

SECTION 12.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

SECTION 12.09 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

SECTION 12.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, AND IF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE DOES NOT HAVE, OR ABSTAINS FROM EXERCISING JURISDICTION, THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (EXCEPT TO THE EXTENT THAT THE PROVISIONS OF THE BANKRUPTCY CODE ARE APPLICABLE AND SPECIFICALLY CONFLICT WITH THE FOREGOING), AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HERETO HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY ANY MEANS PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01, SUCH SERVICE TO BECOME EFFECTIVE TEN (10) DAYS AFTER

SUCH MAILING. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) Each party hereto irrevocably and unconditionally agrees that it will not commence any action or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any other party hereto or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the United States Bankruptcy Court for the District of Delaware, and if the United States Bankruptcy Court for the District of Delaware does not have or abstains from exercising jurisdiction, the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof (except to the extent that the provisions of the Bankruptcy Code are applicable and specifically conflict with the foregoing).

(c) Notwithstanding any other provision of this Section 12.10, the Bankruptcy Court shall have exclusive jurisdiction over any action or dispute involving, relating to or arising out of this Agreement or the other Loan Documents.

SECTION 12.11 WAIVER OF JURY TRIAL, ETC. EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH PARTY HERETO CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF

ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH PARTY HERETO HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTIES HERETO TO ENTER INTO THIS AGREEMENT.

SECTION 12.12 Consent by the Agents and Lenders. Except as otherwise expressly set forth herein to the contrary or in any other Loan Document, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an “Action”) of any Agent or any Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party and to which any Agent or any Lender has succeeded thereto, such Action shall be required to be in writing and may (other than as specified in this Agreement or the other Loan Documents) be withheld or denied by such Agent or such Lender, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

SECTION 12.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

SECTION 12.14 Reinstatement; Certain Payments. If any claim is ever made upon any Secured Party for repayment or recovery of any amount or amounts received by such Secured Party in payment or on account of any of the Obligations, such Secured Party shall give prompt notice of such claim to each other Agent and Lender and the Administrative Representative, and if such Secured Party repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Secured Party or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Secured Party with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Secured Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Secured Party.

SECTION 12.15 Indemnification; Limitation of Liability for Certain Damages.

(a) In addition to each Loan Party's other Obligations under this Agreement, the Loan Documents and the DIP Orders, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Secured Party and all of their respective Related Parties (collectively called the “Indemnitees”) from and against any and all claims, losses, damages, liabilities, obligations, penalties, fees, reasonable and documented out of pocket costs and expenses (including, without limitation, reasonable and documented out-of-pocket attorneys' fees and expenses limited to the reasonable and documented out-of-pocket fees and expenses of King & Spalding LLP, Proskauer Rose LLP, and, if necessary, one (1) local counsel in each relevant jurisdiction material to the interests of the Indemnitees (taken as a whole) (which may include a single special counsel acting in multiple jurisdictions) (and any successor counsel to each), any regulatory or other special counsel to the Agents reasonably deemed necessary by the Agents and, in the event of any actual conflict of interest, one (1) conflicts counsel in each relevant jurisdiction to each group of affected Lenders that are similarly situated (taken as a whole)) incurred by such

Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document, the DIP Orders, the Chapter 11 Cases, any Environmental Claim or any other document executed in connection with the transactions contemplated by this Agreement or the DIP Orders, (ii) any Agent's or any Lender's furnishing of funds to the Borrowers under this Agreement, the other Loan Documents or the DIP Orders, including, without limitation, the management of any such Loans or the Borrowers' use of the proceeds thereof, (iii) the Agents and the Lenders relying on any instructions of the Administrative Representative or the handling of the Loan Account and DIP Collateral of the Borrowers as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement, the other Loan Documents, the DIP Orders or by any document executed in connection with the transactions contemplated by this Agreement, the other Loan Documents or the DIP Orders, or (v) any claim, including any litigation, investigation or proceeding relating to or arising out of any of the foregoing, whether or not any Indemnitee is a party thereto and whether or not the transactions contemplated under this Agreement, the Loan Documents or the DIP Orders are consummated (collectively, the "Indemnified Matters"); *provided, however*, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection for any Indemnified Matters arising solely from (1) the gross negligence, bad faith or willful misconduct of such Indemnitee or their respective directors, officers, employees, partners or other representatives, as determined by a final non-appealable judgment of a court of competent jurisdiction or (2) any dispute solely among Indemnitees other than claims arising out of actions or omissions of any Loan Party or any of their respective Affiliates.

(b) The indemnification for all of the foregoing losses, damages, fees, costs and expenses of the Indemnitees set forth in this Section 12.15 are chargeable against the Loan Account. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees. This Section 12.15 shall not apply to Taxes other than any Taxes that represent losses, claims or damages arising from a non-Tax claim.

(c) No party hereto shall, to the extent permitted by applicable law, assert, and each party hereto hereby waives, any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. Notwithstanding the foregoing, this paragraph shall not waive the liability of any Loan Party for special, indirect, consequential or punitive damages arising out of, in connection with, as a result of, or in any way related to any third party claims against any Secured Party.

(d) The indemnities and waivers set forth in this Section 12.15 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

SECTION 12.16 Records. The unpaid principal of and interest on the Loans, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the Commitments, and the accrued and unpaid fees payable pursuant to Section 2.06 hereof, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

SECTION 12.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each Agent and each Lender and when the conditions precedent set forth in Section 5.01 hereof have been satisfied or waived in writing by the Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Agent and each Lender, and their respective successors and permitted assigns, except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of each Agent and each Lender, and any assignment by any Lender shall be governed by Section 12.07 hereof.

SECTION 12.18 Highest Lawful Rate. It is the intention of the parties hereto that each Agent and each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Loan Document would be usurious as to any Agent or any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Agent or such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other Loan Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Agent or any Lender that is contracted for, taken, reserved, charged or received by such Agent or such Lender under this Agreement or any other Loan Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such Agent or such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender, as applicable, to the Borrowers); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Agent or any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall, subject to the last sentence of this Section 12.18, be canceled automatically by such Agent or such Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Agent or such Lender, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender to the Borrowers). All sums paid or agreed to be paid to any Agent or any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Agent or such Lender, be amortized, prorated, allocated and spread throughout the full term of the Loans until payment in full so that the rate or amount of interest on account of

any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any Agent or any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Agent or such Lender pursuant to this Section 12.18 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Agent or such Lender would be less than the amount of interest payable to such Agent or such Lender computed at the Highest Lawful Rate applicable to such Agent or such Lender, then the amount of interest payable to such Agent or such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Agent or such Lender until the total amount of interest payable to such Agent or such Lender shall equal the total amount of interest which would have been payable to such Agent or such Lender if the total amount of interest had been computed without giving effect to this Section 12.18.

For purposes of this Section 12.18, the term “applicable law” shall mean that law in effect from time to time and applicable to the loan transaction between the Borrowers, on the one hand, and the Agents and the Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America.

The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

SECTION 12.19 Confidentiality. Each Agent and each Lender agrees (on behalf of itself and its Related Parties) to use reasonable precautions to keep confidential, in accordance with its customary procedures for handling confidential information of this nature and in accordance with safe and sound practices of comparable commercial finance companies, any non-public information supplied to it by the Loan Parties pursuant to this Agreement or the other Loan Documents (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), *provided* that nothing herein shall limit the disclosure by any Agent or any Lender of any such information (i) to its Affiliates, its Related Parties or the Related Parties of any Person described in clause (ii) or (iii) below (it being understood that the Persons to whom such disclosure is made either will be informed of the confidential nature of such information and instructed to keep such information confidential in accordance with this Section 12.19 or is subject to other customary confidentiality obligations); (ii) to any other party hereto; (iii) to any assignee or participant (or prospective assignee or participant) or any party to a Securitization, so long as such assignee or participant (or prospective assignee or participant) or party to a Securitization agrees, in writing, to be bound by or is otherwise subject to customary confidentiality obligations (including, without limitation, confidentiality provisions similar in substance to this Section 12.19); (iv) to the extent required by any Requirement of Law or judicial process or as otherwise requested by any Governmental Authority; (v) to the National Association of Insurance Commissioners or any similar organization, any examiner, auditor or accountant or any nationally recognized rating agency; (vi) in connection with any litigation to which any Agent or any Lender is a party; (vii) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or

thereunder; (viii) to any other Person if such information is general portfolio information that does not identify the Loan Parties, or (ix) with the consent of the Administrative Representative. In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to any Agent or any Lender in connection with the administration of this Agreement, the other Loan Documents and the Commitments; *provided* that such information is limited to the principal amount of the facility and name of the Borrowers unless the Parent provides its prior written consent; *provided, further* that, to the extent requested by the Borrowers, the Agents and Lenders shall provide any applicable non-disclosure agreements prior to sharing such other consented information. Each Secured Party agrees, prior to any disclosure under clause (iv) above to (A) any Governmental Authority that does not have supervisory, regulatory or other similar authority with respect to such Secured Party and that is seeking such disclosure solely in connection with an investigation, action, suit or other proceeding that does not otherwise involve such Secured Party or (B) any other Person that is not a Governmental Authority, to use reasonable efforts to notify the Parent of any request for the disclosure of any such confidential information so as to provide the Parent with a reasonable opportunity to obtain a protective order or other comparable relief.

SECTION 12.20 Public Disclosure. Each Loan Party agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure using the name of an Agent, any Lender or any of their respective Affiliates or referring to this Agreement or any other Loan Document without the prior written consent of such Agent or such Lender, except to the extent that such Loan Party or such Affiliate is required to do so under applicable law (in which event, such Loan Party or such Affiliate will consult with such Agent or such Lender before issuing such press release or other public disclosure). Each Loan Party hereby authorizes each Agent and each Lender, with the Borrowers' prior written consent, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the financial arrangements entered into among the parties hereto, as such Agent or such Lender shall deem appropriate, including, without limitation, on a home page or similar place for dissemination of information on the Internet or worldwide web, or in announcements commonly known as tombstones, in such trade publications, business journals, newspapers of general circulation and to such selected parties as such Agent or such Lender shall deem appropriate.

SECTION 12.21 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

SECTION 12.22 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Borrowers, which information includes the name and address of each such entity and other information that will allow such Lender to identify the entities composing the Borrowers in accordance with the USA PATRIOT Act. Each Loan Party agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any Lender may reasonably require from time to time in order to enable such Lender to comply with the USA PATRIOT Act.

SECTION 12.23 Conflict; Control. In the event of any inconsistency between the terms and conditions of the Loan Documents, the Interim DIP Order or any Final DIP Order, the provisions of the Interim DIP Order or Final DIP Order, as the case may be, shall govern and control.

SECTION 12.24 Bankruptcy Matters. This Agreement, the other Loan Documents, and all Liens and DIP Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Debtor, the estate of each Debtor, and any trustee, other estate representative or any successor in interest of any Debtor in any Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of each Administrative Agent and the Lenders and their respective assigns, transferees and endorsees. The DIP Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Chapter 11 Case or any other bankruptcy case of any Debtor to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of any Chapter 11 Case or the release of any DIP Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Administrative Agent file financing statements or otherwise perfect its DIP Liens under applicable law. Except as otherwise permitted pursuant to Section 7.02(c), no Loan Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of the Administrative Agent and the Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Loan Party without the prior express written consent of the Administrative Agent and the Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Loan Party, the Administrative Agent and the Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

The Administrative Agent is hereby authorized and directed by the Lenders to execute and deliver this Agreement and any additional Loan Documents entered into in connection with the subject matter of this Agreement, in its capacity as Administrative Agent, and, by its execution below, each of the undersigned Lenders agrees to be bound by the terms and conditions of this Agreement and such other Loan Documents. The Administrative Agent shall have all of the benefits, indemnities, powers, privileges, protections and rights contained in this Agreement (including, for the avoidance of any doubt, Article IX) in connection with acting in its capacity as Administrative Agent hereunder.

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

**BORROWERS:**

PROGREXION HOLDINGS, INC., a  
Delaware corporation

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

CREDIT.COM, INC., a Delaware corporation

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

EFOLKS HOLDINGS, INC., a Delaware  
corporation

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

CREDITREPAIR.COM HOLDINGS, INC., a  
Delaware corporation

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

**PARENT:**

PGX HOLDINGS, INC.

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

COLLATERAL AGENT AND  
ADMINISTRATIVE AGENT:

**BLUE TORCH FINANCE LLC**

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

[LENDERS:

By:

\_\_\_\_\_  
Name:

Title:]

**Exhibit B**

**Initial DIP Budget**

## PGX Holdings Inc - Budget

(\$ in thousands)

Week-Ended Actual / Forecast	6/10/23 Forecast	6/17/23 Forecast	6/24/23 Forecast	7/1/23 Forecast	7/8/23 Forecast	7/15/23 Forecast	7/22/23 Forecast	7/29/23 Forecast	8/5/23 Forecast	8/12/23 Forecast	8/19/23 Forecast	8/26/23 Forecast	9/2/23 Forecast	9/9/23 Forecast	9/16/23 Forecast	Post-Petition Total
<b>Net Operating Cash Flow</b>																
Lexington Receipts	\$ 1,376	\$ 1,526	\$ 1,312	\$ 1,526	\$ 1,984	\$ 1,884	\$ 1,764	\$ 1,049	\$ 1,832	\$ 1,072	\$ 1,350	\$ 1,782	\$ 1,838	\$ 1,844	\$ 1,674	\$ 23,812
Other Receipts	272	262	272	275	275	275	275	275	277	277	277	277	280	280	280	4,131
<b>Total Receipts</b>	<b>\$ 1,648</b>	<b>\$ 1,788</b>	<b>\$ 1,584</b>	<b>\$ 1,800</b>	<b>\$ 2,259</b>	<b>\$ 2,159</b>	<b>\$ 2,039</b>	<b>\$ 1,324</b>	<b>\$ 2,109</b>	<b>\$ 1,349</b>	<b>\$ 1,628</b>	<b>\$ 2,059</b>	<b>\$ 2,118</b>	<b>\$ 2,124</b>	<b>\$ 1,954</b>	<b>\$ 27,943</b>
<b>Operating Disbursements</b>																
Sales & Marketing	\$ (918)	\$ (649)	\$ (249)	\$ (1,928)	\$ (123)	\$ (485)	\$ (189)	\$ (1,860)	\$ (311)	\$ (455)	\$ (73)	\$ (268)	\$ (1,829)	\$ (51)	\$ (387)	\$ (9,772)
Technology & Operations	(242)	(227)	(12)	(295)	(2)	(162)	(2)	(12)	(260)	(2)	(162)	(8)	(343)	(2)	(162)	(1,891)
Payroll & Benefits	(452)	(314)	(1,324)	(154)	(1,299)	(470)	(1,584)	(177)	(1,276)	(162)	(1,320)	(427)	(19)	(1,434)	(313)	(10,722)
Rent	-	-	-	(99)	-	-	-	-	(99)	-	-	-	(99)	-	-	(297)
Taxes	-	(26)	-	-	-	(33)	(8)	(6)	-	-	(37)	(4)	-	-	(26)	(139)
Insurance	-	-	-	(34)	-	-	-	-	-	-	-	(556)	-	-	-	(590)
Ordinary Course Professional	-	-	(50)	(50)	(64)	(72)	(88)	(120)	(47)	(28)	(77)	(72)	(165)	(14)	(89)	(934)
Lex Law Disbursements	-	-	-	(150)	-	-	-	(150)	-	-	-	-	(150)	-	-	(450)
G&A and Other Disbursements	(1,301)	(392)	(643)	(471)	(165)	(114)	(141)	(516)	(182)	(86)	(120)	(281)	(527)	(266)	(628)	(5,832)
<b>Total Operating Disbursements</b>	<b>\$ (2,913)</b>	<b>\$ (1,608)</b>	<b>\$ (2,277)</b>	<b>\$ (3,181)</b>	<b>\$ (1,652)</b>	<b>\$ (1,336)</b>	<b>\$ (2,011)</b>	<b>\$ (2,840)</b>	<b>\$ (2,174)</b>	<b>\$ (732)</b>	<b>\$ (1,787)</b>	<b>\$ (1,614)</b>	<b>\$ (3,133)</b>	<b>\$ (1,766)</b>	<b>\$ (1,604)</b>	<b>\$ (30,627)</b>
Capital Expenditures	(522)	-	-	(329)	-	(10)	-	-	(52)	-	(250)	(10)	-	-	-	(1,173)
<b>Net Operating Cash Flow</b>	<b>\$ (1,786)</b>	<b>\$ 180</b>	<b>\$ (693)</b>	<b>\$ (1,709)</b>	<b>\$ 608</b>	<b>\$ 813</b>	<b>\$ 28</b>	<b>\$ (1,516)</b>	<b>\$ (117)</b>	<b>\$ 617</b>	<b>\$ (410)</b>	<b>\$ 435</b>	<b>\$ (1,015)</b>	<b>\$ 358</b>	<b>\$ 350</b>	<b>\$ (3,857)</b>
<b>Non-Operating Cash Flow</b>																
<b>Financing Activity</b>																
DIP Fees	\$ (597)	\$ -	\$ -	\$ (277)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (874)
DIP Interest Payments	-	-	-	(186)	-	-	-	-	(301)	-	-	-	(240)	-	(120)	(846)
<b>Total Financing Activities</b>	<b>\$ (597)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (463)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (301)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (240)</b>	<b>\$ -</b>	<b>\$ (120)</b>	<b>\$ (1,720)</b>
<b>Restructuring-Related Items</b>																
Professional Fees	-	(5,080)	(950)	(931)	(975)	(950)	(2,170)	(850)	(1,044)	(844)	491	(32)	-	-	(25)	(13,360)
Wind-Down Funding	-	-	-	-	-	-	-	-	-	-	(2,625)	-	-	-	-	(2,625)
<b>Total Restructuring-Related Items</b>	<b>\$ -</b>	<b>\$ (5,080)</b>	<b>\$ (950)</b>	<b>\$ (931)</b>	<b>\$ (975)</b>	<b>\$ (950)</b>	<b>\$ (2,170)</b>	<b>\$ (850)</b>	<b>\$ (1,044)</b>	<b>\$ (844)</b>	<b>\$ (2,134)</b>	<b>\$ (32)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (25)</b>	<b>\$ (15,985)</b>
<b>Total Net Cash Flow, Adjusted</b>	<b>\$ (2,383)</b>	<b>\$ (4,900)</b>	<b>\$ (1,643)</b>	<b>\$ (3,103)</b>	<b>\$ (367)</b>	<b>\$ (137)</b>	<b>\$ (2,143)</b>	<b>\$ (2,366)</b>	<b>\$ (1,462)</b>	<b>\$ (228)</b>	<b>\$ (2,544)</b>	<b>\$ 404</b>	<b>\$ (1,255)</b>	<b>\$ 358</b>	<b>\$ 206</b>	<b>\$ (21,562)</b>
<b>Liquidity Summary</b>																
<b>Book Cash</b>																
Beginning Cash Balance	\$ 2,642	\$ 12,259	\$ 7,359	\$ 5,716	\$ 10,538	\$ 10,171	\$ 10,035	\$ 7,892	\$ 5,526	\$ 4,064	\$ 3,836	\$ 1,292	\$ 1,696	\$ 441	\$ 799	\$ 2,642
Net Cash Flow	(2,383)	(4,900)	(1,643)	(3,103)	(367)	(137)	(2,143)	(2,366)	(1,462)	(228)	(2,544)	404	(1,255)	358	206	(21,562)
DIP Proceeds	12,000	-	-	7,925	-	-	-	-	-	-	-	-	-	-	-	19,925
<b>Ending Cash Balance</b>	<b>\$ 12,259</b>	<b>\$ 7,359</b>	<b>\$ 5,716</b>	<b>\$ 10,538</b>	<b>\$ 10,171</b>	<b>\$ 10,035</b>	<b>\$ 7,892</b>	<b>\$ 5,526</b>	<b>\$ 4,064</b>	<b>\$ 3,836</b>	<b>\$ 1,292</b>	<b>\$ 1,696</b>	<b>\$ 441</b>	<b>\$ 799</b>	<b>\$ 1,005</b>	<b>\$ 1,005</b>

**Memo:**

Lexington Law Ending Cash Balance	\$ 1,977	\$ 1,801	\$ 2,133	\$ 1,546	\$ 1,564	\$ 1,341	\$ 1,076	\$ 904	\$ 867	\$ 1,117	\$ 1,152	\$ 1,052	\$ 303	\$ 557	\$ 385
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