

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
 :
 Debtors. : Jointly Administered
 :
 : Obj. Deadline: August 7, 2019 at 4:00 p.m. (ET)
 : Hearing Date: August 14, 2019 at 11:00 a.m. (ET)
 :
 : Re: Docket Nos. 20 & 64
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NOTICE OF (A) ENTRY OF INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING CERTAIN PROTECTIONS TO PREPETITION SECURED PARTIES, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF; AND (B) FINAL HEARING THEREON

PLEASE TAKE NOTICE that, on July 15, 2019, the above captioned debtors and debtors in possession (collectively, the “**Debtors**”), filed the *Debtors’ Motion (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 Authorizing the Debtors to (A) Obtain Senior Secured Priming Superpriority Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief [Docket No. 20] (the “**Motion**”)* with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

A copy of the Motion is attached hereto as Exhibit A.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



PLEASE TAKE FURTHER NOTICE that, following an initial hearing to consider the Motion on July 17, 2019, the Court entered the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Certain Protections to Prepetition Secured Parties, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 64] (the “**Interim Order**”). A copy of the Interim Order is attached hereto as Exhibit B.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, objections or responses to the final relief requested in the Motion, if any, must be made in writing, filed with the Court on or before **August 7, 2019 at 4:00 p.m. (prevailing Eastern Time)**, and served on: (i) the U.S. Trustee 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)); (ii) the Debtors, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (iii) proposed counsel for the Debtors, (a) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq. and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com and liza.burton@lw.com)), and (b) Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel for the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 (Attn: Matt S. Barr, Esq., David N. Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq.); and (v) if any statutory committee has been appointed in the Chapter 11

Cases, counsel to such committee.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, the final hearing with respect to the Motion, if required, will be held before The Honorable Karen B. Owens at the Court, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801 on **August 14, 2019 at 11:00 a.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE FINAL RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: July 18, 2019
Wilmington, Delaware

/s/ Brett M. Haywood

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*Proposed Counsel for Debtors
and Debtors-in-Possession*

EXHIBIT A

Motion

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

----- X
In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
: :
Debtors. : (Joint Administration Requested)
: :
----- X

DEBTORS’ MOTION (I) PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363 AND 364 AUTHORIZING THE DEBTORS TO (A) OBTAIN SENIOR SECURED PRIMING SUPERPRIORITY POSTPETITION FINANCING, (B) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C) USE CASH COLLATERAL OF PREPETITION SECURED PARTIES AND (D) GRANT ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (II) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND 4001(c); AND (III) GRANTING RELATED RELIEF

The debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) hereby move (the “**Motion**”) pursuant to, among other things, sections 105, 361, 362, 363 and 364 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 Rule 4001-2(a)(i) and (ii) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court of the District of Delaware (the “**Local Rules**”) for the entry of an interim order (the “**Interim Order**”) and a final order (the “**Final Order**”):

- (1) authorizing the Debtors to (i) obtain postpetition secured debtor-in-possession financing in an aggregate principal amount of up to \$7,500,000 on an interim basis and a total of \$35,000,000 on a final basis (the “**DIP Facility**”) pursuant to the terms and conditions of the Interim Order and that certain Superpriority Senior Secured Debtor-in-Possession Credit Agreement, substantially in the form attached to the Interim Order as Exhibit A (and as the same may be amended,

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**DIP Credit Agreement**”)², dated as of July 17, 2019 (the “**Closing Date**”) by and among Emerge Energy Services Operating LLC and Superior Silica Sands LLC (“**Borrowers**”), as borrowers, Emerge Energy Services LP (“**Parent**”) and Emerge Energy Services Finance Corporation (“**Finance**” and together with Parent, in their capacities as such, the “**Guarantors**” and each a “**Guarantor**”), as guarantors, HPS Investment Partners, LLC, as administrative agent and collateral agent (in such capacities, collectively, the “**DIP Agent**”) and the lenders party thereto from time to time (the “**DIP Lenders**” and, together with the DIP Agent and any other party to which DIP Obligations (as defined herein) are owed, the “**DIP Secured Parties**”), and (ii) incur the “Obligations” under the DIP Credit Agreement (such Obligations, as provided for and defined in the DIP Credit Agreement, shall be referred to herein as the “**DIP Obligations**”) (the DIP Credit Agreement, together with the Interim Order, any Final Order and any related agreements, documents, certificates, instruments, exhibits and schedules delivered or executed from time to time in connection therewith, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the “**DIP Documents**”);

- (2) authorizing the Debtors to execute and enter into the DIP Credit Agreement and to perform their respective obligations thereunder and such other and further acts as may be required in connection with the DIP Documents, including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Documents as such amounts become due and payable;
- (3) authorizing the Debtors to grant security interests, liens and superpriority claims (including a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code and liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code (and, solely as set forth in the Interim Order and the Final Order, priming liens pursuant to section 364(d)(1) of the Bankruptcy Code), to the DIP Agent, for the benefit of the DIP Secured Parties, in the DIP Collateral (as defined below) (and all proceeds thereof), including, without limitation, all property constituting “cash collateral,” as defined in section 363(a) of the Bankruptcy Code (“**Cash Collateral**”), to secure the DIP Obligations;
- (4) authorizing the Debtors’ use of Cash Collateral of the Prepetition Secured Parties (as defined below) solely as provided herein, and the provision of adequate protection to the Prepetition Secured Parties for any Diminution in Value (as defined below) of their interests in the Prepetition Collateral (as defined below), including Cash Collateral, solely as set forth in the Interim Order and the Final Order;

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the applicable DIP Document (as defined herein).

- (5) authorizing the Borrower to borrow under the DIP Facility up to an aggregate principal amount of \$35,000,000 (up to \$7,500,000 of which shall be available to the Debtors upon entry of the Interim Order and shall be drawn in a single draw by the Debtors on or around the Closing Date and, subject to the entry of the Final Order, up to two (2) additional drawings of the remaining balance of amounts committed under the DIP Facility), to be incurred in accordance with the terms and conditions of the DIP Documents to (i) finance the ongoing working capital needs of the Debtors and otherwise fund the operations and administration of the Debtors during these Chapter 11 Cases, (ii) make required adequate protection payments and (iii) pay fees, costs and expenses in connection with the DIP Documents and these Chapter 11 Cases, including, but not limited to, professional fees and expenses;
- (6) the scheduling of an interim hearing (the “**Interim Hearing**”) on the Motion for this Court to consider entry of the Interim Order;
- (7) the scheduling of a final hearing (the “**Final Hearing**”) on the Motion for a date that is before the thirtieth (30th) day after the Petition Date (as defined below) to consider entry of the Final Order, *inter alia*, authorizing the borrowings under the DIP Facility on a final basis and approval of notice procedures with respect thereto; and
- (8) modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents, the Interim Order, and the Final Order.

In support of the Motion, the Debtors rely on the *Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First-Day Declaration**”), the *Declaration of Adam L. Dunayer, Managing Director of Houlihan Lokey, in Support of the Debtors’ Motion (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 Authorizing the Debtors to (A) Obtain Senior Secured Priming Superpriority Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief* (the “**Dunayer Declaration**”), and the *Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in Support of the Debtors’ Motion (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 Authorizing the Debtors to (A) Obtain*

Senior Secured Priming Superpriority Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief (the “**Gaston Declaration**” and together with the Dunayer Declaration and the First-Day Declaration, the “**Declarations**”), each filed contemporaneously herewith, and respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 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 as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. General Background

2. On July 15, 2019 (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under Chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First-Day Declaration and fully incorporated herein by reference.

3. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code Sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

B. The Debtors' Secured Prepetition Indebtedness

4. Pursuant to (i) that certain Second Amended Revolving Credit and Security Agreement, dated as of January 5, 2018 (as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "**First Lien Credit Agreement**"), by and among the Borrowers, as borrowers, the Guarantors, as guarantors, the lenders party thereto from time to time (collectively, the "**First Lien Prepetition Lenders**"), HPS Investment Partners, LLC, as administrative and collateral agent (the "**First Lien Prepetition Agent**" and, together with the First Lien Prepetition Lenders, the "**Credit Agreement Secured Parties**") and the other financial institutions party thereto from time to time, (ii) that certain Second Lien Note Purchase Agreement, dated as of January 5, 2018 (as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "**Note Purchase Agreement**"), by and among the Borrowers, as issuers, the Parent, as guarantor, the noteholders under the Note Purchase Agreement (collectively, the "**Second Lien Prepetition Noteholders**"), HPS Investment Partners, LLC, as notes and collateral agent (the "**Second Lien Prepetition Notes Agent**" and, together with the Second Lien Prepetition Noteholders and the Credit Agreement Secured Parties, the "**Prepetition Secured Parties**") and the other financial institutions party thereto from time to time, and (iii) the "Other Documents" (as defined in the Credit Agreement and Notes Purchase Agreement and, together with the Credit Agreement and the Note Purchase Agreement, the "**Prepetition Credit Documents**"), the First Lien Prepetition Lenders provided a

fully perfected secured loan and the Second Lien Prepetition Noteholders provided fully perfected secured notes to and for the benefit of the Borrowers and Guarantors.

5. As of the Petition Date, the Debtors other than Emerge Energy Services GP LLC and Finance, as Borrowers and Guarantors, were indebted to the First Lien Prepetition Lenders and the First Lien Prepetition Agent, without defense, counterclaim or offset of any kind, in respect of loans made and letters of credit issued in the aggregate outstanding principal amount under the Credit Agreement of not less than \$66,710,000, plus accrued and unpaid interest and fees with respect thereto, and were indebted to the Second Lien Prepetition Noteholders and the Second Lien Prepetition Notes Agent, without defense, counterclaim or offset of any kind, in respect of notes issued in the aggregate outstanding principal amount under the Note Purchase Agreement of not less than \$215,755,307, plus accrued and unpaid interest and fees with respect thereto, which amounts, for the avoidance of doubt, do not include the Prepetition Secured Parties' accrued and unpaid attorneys' fees, costs, and expenses, or any premium, make-whole or penalty payments otherwise required by the terms of the Prepetition Credit Documents, including, without limitation, upon a prepayment or acceleration of the obligations thereunder (such amounts, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Credit Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Debtors' obligations pursuant to the Prepetition Credit Documents, collectively the "**Prepetition Secured Obligations**").

6. To secure the Prepetition Secured Obligations, the Borrowers and Guarantors granted to the Prepetition Secured Parties the Prepetition Liens (as defined below) upon all “Collateral” under and as defined in the Prepetition Credit Documents (the “**Prepetition Collateral**”).

C. The Debtors’ Efforts to Obtain Postpetition Financing

7. Given the Debtors’ prepetition capital structure and the challenges facing the Debtors’ businesses, the DIP Facility represents the best available postpetition financing. As set forth in more detail in the accompanying Declarations, the Debtors’ Prepetition Secured Obligations exceed \$280,000,000. The Prepetition Collateral securing those obligations comprises substantially all of the Debtors’ assets, and the Debtors understand that the Prepetition Secured Parties will not consent to priming of their security interests in the Prepetition Collateral. The going-concern value of those assets is meaningfully less than the face value of the Prepetition Secured Obligations.

8. As a result, the likelihood of third-party financing was extremely low. Third parties would be highly unlikely to lend on an unsecured basis; insufficient unencumbered assets exist to secure the necessary postpetition financing; and any attempt to institute secured financing would require successfully priming the Prepetition Secured Parties on a contested basis.

9. The Debtors therefore viewed the existing Prepetition Secured Parties as the parties most likely to consider and consummate a postpetition financing transaction with the Debtors, and the Debtors and their advisors devoted substantial energy to negotiating the best terms available from the Postpetition Secured Parties.

10. Once the Debtors received an initial proposal from the Prepetition Secured Parties, the Debtors' financial advisors canvassed the market to assess whether any third parties were willing to provide DIP Financing to the Debtors on terms equal to or better than those proposed by the Prepetition Secured Parties. Houlihan Lokey, drawing on its experience in debt financing transactions in the oil and gas industry, identified the targets that in their professional judgment were the most likely to seriously pursue third-party postpetition financing. As set forth in the Dunayer Declaration, none of the third parties contacted expressed any willingness to pursue postpetition financing of the Debtors under the circumstances presented.

11. The Debtors therefore focused on negotiating with the Prepetition Secured Parties to obtain the best postpetition financing terms available. Those negotiations were extended, arm's-length, good-faith negotiations resulting in the currently proposed DIP Facility, which, as set forth in the Dunayer Declaration, includes meaningful improvements in terms over the facility as first proposed. The DIP Facility is the best postpetition financing available to the Debtors. The Debtors are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, and new credit is unavailable to the Debtors without providing the DIP Agent, for the benefit of the DIP Lenders, the (i) DIP Superpriority Claims (as defined herein) and (ii) DIP Liens in the DIP Collateral, as provided herein and in the DIP Documents.

D. Need for Debtor in Possession Financing and Use of Prepetition Collateral

12. If this Motion is not approved and the Debtors do not obtain authorization to borrow under the DIP Facility and to use the Cash Collateral, the Debtors will suffer immediate and irreparable harm. As of the Petition Date, the Debtors had minimal cash on hand. Without the funds available under the DIP Facility and the use of the Cash Collateral, the Debtors will not

have sufficient available sources of working capital and financing to carry on the operation of their businesses. The Debtors' ability to maintain business relationships with their vendors, suppliers, operators and managers, to make capital expenditures and to satisfy other working capital and operational needs and otherwise finance their operations is essential to the Debtors' continued viability.

SUMMARY OF RELIEF REQUESTED

13. The Debtors seek authority to establish the DIP Facility that provides for postpetition secured loans in an amount not to exceed \$35,000,000 (the "**DIP Loans**"), subject to the terms and conditions of the DIP Documents, including authority to draw \$7,500,000 thereunder on an interim basis prior to the Final Hearing on this Motion.

SUMMARY OF TERMS OF THE DIP FACILITY

14. In accordance with the disclosure requirements of Bankruptcy Rule 4001(b) and (c) and Local Rule 4001-2(a)(i) and (ii), the material terms of the DIP Facility, and certain highlighted provisions, are as follows:³

Material Terms⁴	Summary of Relevant Provisions
Borrowers	Emerge Energy Services Operating LLC and Superior Silica Sands LLC
Guarantors	Emerge Energy Services LP and Emerge Energy Services Finance Corporation
Lenders	Lenders party to the DIP Credit Agreement
DIP Agent	HPS Investment Partners, LLC
Purpose	The DIP Facility shall be used for the following purposes: (i) to consummate the transactions contemplated by the DIP Documents and pay related fees, costs and expenses, (ii) for working capital and other general corporate purposes of the Borrowers and the

³ This summary is qualified in its entirety by the provisions of the DIP Documents. To the extent there are any conflicts between this summary and any DIP Document, the terms of such DIP Document shall govern. Capitalized terms used but not defined herein shall have the meanings set forth in the DIP Credit Agreement or the Interim Order, as applicable.

⁴ Except where stated otherwise, the sources of the material terms selected for inclusion herein are Federal Rule of Bankruptcy Procedure 4001(c)(1)(B) and Local Rule 4001-2(a)(ii).

Material Terms ⁴	Summary of Relevant Provisions
	<p>Guarantors during the pendency of the Chapter 11 Cases; (iii) to pay certain fees and expenses of professionals retained by the Debtors, subject to the Carve-Out and for certain other prepetition and pre-filing expenses that are approved by the Court and consented to by the DIP Agent; and (iv) to make required adequate protection payments, in each case in accordance with the Approved Budget, as applicable, or otherwise with the prior written consent of the DIP Agent in its sole discretion. Interim Order ¶ 8(b).</p>
Borrowing Limits	<p>Maximum new money Advances of \$35,000,000 (\$7,500,000 on an interim basis), which amounts exclude Roll-Up Loans. DIP Credit Agreement § 1.2 (Definitions).</p>
<p>Incremental Roll-Up of Prepetition Loans <i>Local Rule 4001-2(a)(i)(E)</i></p>	<p>Any net cash proceeds received by the Loan Parties from the sale of any Prepetition Collateral or the proceeds from receivables shall be (i) retained by the Loan Parties <i>and</i> (ii) deemed to repay, on a dollar-for-dollar basis, and discharge, until paid in full, the aggregate outstanding principal indebtedness under the Prepetition Revolving Credit Agreement, including the amount currently cash collateralizing all outstanding letters of credit or letters of credit guaranties thereunder and any interest accrued through the date of discharge <i>and</i> (iii) be deemed borrowed by the Borrowers and deemed funded by each DIP Lender in the exact same principal amount equal to the aggregate outstanding principal amount of the Prepetition Revolver Obligations (as defined below) held by such Lender on the date immediately prior to the deemed funding of such Roll-Up Loan, on a dollar-for-dollar basis, under the DIP Facility in accordance with the terms of the DIP Documents and the Interim Order (the “Roll-Up Loans”). Interim Order ¶ 8(h).</p>
Interest Rate	<ul style="list-style-type: none"> • Domestic Rate Loans: Alternate Base Rate +7.00% • LIBOR Rate Loans: LIBOR Rate +8.00% • Default Interest Rate: 2.00% above the then applicable rate. <p>DIP Credit Agreement § 3.1.</p>
Maturity Date	<p>In addition to maturities tied to milestones and events of default customary for financings of this type, the DIP Facility includes an outside maturity date of the six month anniversary of the Closing Date. DIP Credit Agreement § 1.2 (Definitions).</p>

Material Terms ⁴	Summary of Relevant Provisions
Fees	<ul style="list-style-type: none"> • Commitment Fee. If, for any calendar quarter prior to the Maturity Date, the average daily unpaid balance of the Advances (other than any Roll-Up Loans) for each day of such calendar quarter does not equal the Maximum Advance Amount, then Borrowers shall pay to Agent for the ratable benefit of Lenders a fee at a rate equal to 1.00% per annum on the amount by which the Maximum Advance Amount exceeds such average daily unpaid balance of the Advances (other than any Roll-Up Loans) for each day of such calendar quarter. Such fee shall be payable to Agent in arrears on the first Business Day of each calendar quarter with respect to the previous calendar quarter. DIP Credit Agreement § 3.3. • Closing Fee. The Borrowers will, on a joint and several basis, pay (or cause to be paid) to each Lender, a closing fee (the “Closing Fee”) in an amount equal to 3.00% of the aggregate Commitment Amount of such Lender as of the Closing Date, which Closing Fee will be fully earned and due and payable on the Closing Date. Fee Letter (attached hereto as Exhibit B). • DIP Fee. If the Borrowers, Parent Guarantor or any of their respective Subsidiaries enters into a debtor-in-possession financing arrangement in lieu of the DIP Facility or as a refinancing or replacement of, in whole or in part, the DIP Facility (an “Alternative DIP”) and a financial institution other than the Lenders provides such debtor-in-possession financing arrangement or other credit financing to the Borrowers, Parent Guarantor or any of their respective Subsidiaries, or if any such Alternative DIP is consummated, in whole or in part, with funds of the Credit Parties, in lieu of some or all of the DIP Facility, then the Borrowers agree, on a joint and several basis, to pay (or cause to be paid) to the Agent, for the ratable benefit of the Lenders, a prepayment premium (the “DIP Fee”) in an amount equal to 5.00% of the aggregate outstanding principal amount of the Advances (including any Roll-Up Loans) and unused Commitments of each Lender, immediately upon consummation of the Alternative DIP. Fee Letter (attached hereto as Exhibit B).
DIP Budget	A copy of the Initial Budget is attached as Exhibit B to the Interim Order.
Limitation on Use of DIP Facility Proceeds <i>Bankruptcy Rule 4001(b)(1)(B)(ii); Local Rule 4001-2(a)(ii)</i>	Notwithstanding any other provision of the Interim Order or any other order entered by this Court, no DIP Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, any Guarantor, any official committee appointed in the Chapter 11 Cases, or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (i) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (a) against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, in each case in such capacities, or any action purporting to do the foregoing in respect of the Prepetition Debt, the Prepetition Note Obligations (as defined below), the Prepetition Second Lien Notes Obligations, liens on the Prepetition Collateral, DIP Obligations, DIP Liens, DIP Superpriority Claims and/or the adequate protection obligations, adequate protection liens and superpriority claims granted to the Prepetition Lenders and the Prepetition Noteholders, 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 Revolver Obligations, Prepetition Note Obligations, the DIP Obligations and/or the liens, claims, rights, or security interests granted under the Interim Order, the Final Order, the DIP Documents, the Prepetition Credit Documents including, in each case, without limitation, 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; <i>provided</i> , however, advisors to any Creditors’ Committee may investigate any potential challenges

Material Terms ⁴	Summary of Relevant Provisions
	<p>with respect to the Prepetition Credit Documents, the Prepetition Revolver Obligations, the Prepetition Note Obligations, the Prepetition Revolver Liens (as defined below), and the Prepetition Note Liens during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed \$35,000 in the aggregate; (ii) to prevent, hinder, or otherwise delay the Prepetition Secured Parties', the DIP Agent's or the DIP Lenders', as applicable, enforcement or realization on the Prepetition Revolver Obligations, the Prepetition Note Obligations, the Prepetition Collateral, the DIP Obligations, the DIP Collateral, and the liens, claims, and rights granted to such parties under the Orders, each in accordance with the DIP Documents, the Prepetition Credit Documents or the Interim Order; (iii) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Agent or the DIP Lenders under the Interim Order, the Prepetition Credit Documents, or the DIP Documents, as applicable (other than in connection with an Approved Chapter 11 Plan); (iv) 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 DIP Liens, the DIP Superpriority Claims, adequate protection liens, and superpriority claims granted to the Prepetition Lenders or the Prepetition Noteholders, as applicable, unless all DIP Obligations, Prepetition Revolver Obligations, Prepetition Note Obligations, adequate protection obligations, and claims granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under the Interim Order, have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Requisite Lenders (as defined in the DIP Credit Agreement); or (v) to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the DIP Requisite Lenders (as defined in the DIP Credit Agreement) or are otherwise included in the Approved Budget. Interim Order ¶ 27.</p>
<p>Conditions Precedent to Lending</p>	<p>The effectiveness of the DIP Credit Agreements and the occurrence of the Closing Date, as well as the availability of each Advance, are subject to the satisfaction, or waiver by the agent, of conditions precedent customary for financings of this type and are set forth at Article VII of the DIP Credit Agreement.</p>
<p>Priority of Claims and Liens <i>Local Rule 4001-2(a)(i)(D), (G)</i></p>	<p>Claims. Effective upon entry of the Interim Order, the DIP Agent and the DIP Lenders are granted, against each of the Debtors on a joint and several basis, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim for all of the DIP Obligations (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, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) (including the Prepetition 507(b) Claim (as defined below)) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations (as defined below)), 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 Loan Parties and all proceeds thereof (excluding Avoidance Actions but, subject only to and effective upon entry of the Final Order, including Avoidance Proceeds). Interim Order ¶ 12.</p> <p>Liens. As security for the DIP Obligations, effective and perfected upon the date of the Interim Order and without the necessity of the execution, recordation of filings by the Loan Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, any notation of certificates of title for a titled good,</p>

Material Terms ⁴	Summary of Relevant Provisions
	<p>or the possession or control by the DIP Agent of, or over, any DIP Collateral, the following security interests and liens are granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in (i), (ii) and (iii) below being collectively referred to as the “DIP Collateral”), subject only to payment in full in cash of the Carve-Out (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to the Interim Order and the DIP Documents, the “DIP Liens”):</p> <ul style="list-style-type: none"> (i) <u>First Lien on Unencumbered Property</u>. 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 Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date (including pursuant to Section 546(b) of the Bankruptcy Code), is not subject to a valid, perfected and non-avoidable lien (collectively, “Unencumbered Property”). (ii) <u>Priming Liens on Prepetition Collateral</u>. 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 each Loan Party that is subject to the Prepetition Liens, which lien shall be senior in all respects to such Prepetition Liens. (iii) <u>Liens Junior to Certain Other Liens</u>. 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 each Loan Party that, on or as of the Petition Date (including pursuant to Section 546(b) of the Bankruptcy Code), is subject to valid, perfected and unavoidable liens senior to the Prepetition Liens in existence immediately prior to the Petition Date (the “Senior Liens”).
<p>The Debtors’ Stipulations & Release <i>Fed. R. Bankr. P. 4001(c)(1)(B)(iii); Local Rule 4001-2(a)(i)(B)</i></p>	<p>Stipulations. Without prejudice to the rights of any party in interest and subject to the limitations thereon summarized herein, the Debtors admit, stipulate and agree, among other things (the below list summarizing the most noteworthy stipulations), that</p> <ol style="list-style-type: none"> 1. As of the Petition Date, the Loan Parties (other than Finance) were indebted and jointly and severally liable to the Prepetition Secured Parties, without objection, defense, counterclaim or offset of any kind, as follows: (a) pursuant to the Prepetition Revolving Credit Agreement, an aggregate principal amount of not less than \$66,710,000, plus unliquidated amounts including interest thereon and fees, expenses, charges and other obligations incurred in connection with the Prepetition Revolving Credit Agreement (the “Prepetition Revolver Obligations”); (b) valid, binding, perfected, enforceable, non-avoidable, first-priority liens, and security interests in the Prepetition Collateral to secure the Prepetition Revolver Obligations (the “Prepetition Revolver Liens”); (c) Pursuant to the Prepetition Note Purchase Agreement, an aggregate principal amount of not less than \$215,755,307 million, plus unliquidated amounts including interest thereon and fees, expenses, charges, Make Whole Amount and/or Applicable Redemption Premium (each as defined in the Prepetition Note Purchase Agreement), and other obligations incurred in connection with the Prepetition Note Purchase Agreement (collectively, such obligations, the “Prepetition Note Obligations” and, together with the Prepetition Revolver Obligations, the “Prepetition Debt”); and (d) valid, binding, perfected, enforceable, non-avoidable, first-priority liens, and security interests in the Prepetition Collateral (the “Prepetition Note Liens” and, together with the

Material Terms ⁴	Summary of Relevant Provisions
	<p>Prepetition Revolver Liens, the “Prepetition Liens”).</p> <ol style="list-style-type: none"> 2. By virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Credit Documents, none of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor’s operations are conducted or are control persons or insiders of the Debtors. 3. The Prepetition Debt constitutes the legal, valid, binding, non-avoidable and enforceable obligations of the Loan Parties (other than Finance), and the Prepetition Liens are valid, binding, properly perfected, non-avoidable, and enforceable liens on and security interests in the Prepetition Collateral. 4. All proceeds of the Prepetition Collateral and all cash and cash equivalent proceeds maintained in deposit or securities accounts subject to prepetition control agreements or otherwise within the control of the Prepetition Secured Parties, are “cash collateral” of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the “Cash Collateral”). <p>Release. Effective as of the date of entry of the Final Order, but subject the limitations summarized herein, including the expiration of the Challenge Period, the Debtors and the Loan Parties absolutely, unconditionally, and irrevocably release and forever discharge and acquit the Prepetition Secured Parties and their respective Representatives (as defined below) (collectively, the “Released Parties”) from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all “claims” (as defined in the Bankruptcy Code), counterclaims, demands, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the Petition Date (including, without limitation, causes of action in the nature of “lender liability”), setoff, recoupment or other offset rights against any and all of the Released Parties, of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the Prepetition Credit Documents, including, without limitation, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the deal reflected thereby, the Prepetition Collateral or the debtor-creditor relationship among any of the applicable Prepetition Secured Parties, on the one hand, and the Debtors, on the other hand, from the beginning of time until immediately preceding the entry of the Interim Order, 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 against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order (collectively, the “Released Claims”), whether such Released Claims are matured or unmatured. Interim Order ¶ 7.</p>
<p>Adequate Protection <i>Fed. R. Bankr. P. 4001(c)(1)(B)(ii)</i></p>	<p>The proposed adequate protection provided to the Prepetition Secured Parties comprises the following (Adequate protection claims and liens maintain the prepetition priorities as between the Prepetition Lenders and the Prepetition Noteholders): (i) Adequate Protection Liens upon all of the DIP Collateral, subordinate in priority only to the DIP Liens and any liens to which the DIP Liens are Junior and to payment in full in cash of the Carve-Out, (ii) allowed superpriority administrative expense claims as provided for in Section 507(b) of the Bankruptcy Code with recourse to the DIP Collateral and subordinate to the payment in full in cash of the Carve-Out and the DIP Superpriority Claims; (iii) subject to the Carve-Out, payment of (x) all accrued and unpaid interest and fees at default rate under the Prepetition Credit Agreement and (y) all reasonable and documented fees, out-of-pocket expenses and disbursements of the Prepetition Secured Parties, upon entry of the Interim Order; (iv) ongoing payment postpetition of the fees, expenses, and disbursements payable to the Prepetition Secured Parties, subject to the Review Period; and (v) delivery of all required written financial reporting and other periodic reporting that is required to be provided to the</p>

Material Terms ⁴	Summary of Relevant Provisions
	DIP Agent or the DIP Lenders under the DIP Credit Agreement. Interim Order ¶ 18.
Events of Default	The DIP Credit Agreement contains customary events of default for financings of this type and are set forth at Article X of the DIP Credit Agreement.
Carve-Out <i>Local Rule 4001-2(a)(i)(F)</i>	<p>As used in the Interim Order, the term “Carve-Out” includes:</p> <ul style="list-style-type: none"> (i) <u>Allowed Professional Fees Incurred Prior to Carve-Out Trigger Notice</u>. To the extent allowed by this Court at any time, the fees, costs and expenses of Professional Persons, (the “Professional Fees”), at any time on or prior to the first business day after delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by this Court before or after delivery of a Carve-Out Trigger Notice. (ii) <u>Allowed Professional Fees Incurred After a Carve-Out Trigger Notice</u>. Any Professional Fees of the Professional Persons incurred after the first Business Day following delivery by the DIP Agent of the Carve-Out Trigger Notice, to the extent allowed by this Court at any time, whether by interim order, procedural order or otherwise, in an aggregate amount not to exceed \$1,000,000 (the “Post Carve-Out Cap”), <p>On the day on which a Carve-Out Trigger Notice is received by the Debtors (such date, the “Carve-Out Trigger Date”), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand to transfer to the Professional Fees Account (as defined below) cash in an amount equal to all obligations benefitting from the Carve-Out as more fully set forth below.</p> <p>On and after the Carve-Out Trigger Date, the DIP Agent shall deposit into a segregated account of the Debtors not subject to the control of the DIP Agent, any DIP Lender or any Prepetition Secured Party (the “Professional Fees Account”) any cash swept or foreclosed after delivery of the Carve-Out Trigger Notice (including cash received as a result of the sale or other disposition of any assets) until the Professional Fees Account has been fully funded (inclusive of any amounts on deposit therein prior to the issuance of such Carve-Out Trigger Notice) in an amount equal to all obligations benefitting from the Carve-Out.</p> <p>Except to the extent expressly provided by further order of this Court, the Debtors may use funds held in the Professional Fees Account only to pay Professional Fees as they become allowed and payable pursuant to any interim or final orders of this Court, and not for any other purpose until all obligations and liabilities benefitting from the Carve-Out are paid and satisfied in full in cash.</p> <p>So long as a Carve-Out Trigger Notice has not been delivered as provided above: (i) the Debtors shall be permitted to pay Professional Fees allowed and payable under sections 328, 330 or 331 of the Bankruptcy Code or other order of this Court, as the same may become due and payable, including on an interim basis; and (ii) such payments shall not reduce, or be deemed to reduce, the Carve-Out. Without prejudice to the rights of any Professional Person to contest any such objection, nothing in the Interim Order shall be construed to impair the ability of any creditor or party in interest to object to any Professional Fees. Interim Order ¶ 11.</p>

Material Terms ⁴	Summary of Relevant Provisions
<p>Lien & Other Challenges <i>Local Rule 4001-2(a)(i)(B)</i></p>	<p>The Debtors' stipulations, including as to validity of the Prepetition Liens, shall be binding upon all other parties in interest, in all circumstances and for all purposes unless: (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 by no later than (i) (x) with respect to parties in interest with requisite standing other than the Creditors' Committee, 75 calendar days after entry of the Interim Order and (y) with respect to the Creditors' Committee, 60 calendar days after the appointment of the Creditors' Committee, if any, (ii) any such later date as has been agreed to, in writing, by the Prepetition Revolver Agent (with the consent of the Requisite Lenders (as defined in the Prepetition Revolving Credit Agreement)) or the Prepetition Note Agent, as applicable, and (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable period of time set forth in this paragraph (the time period established by the foregoing clauses (i), (ii), and (iii), the "Challenge Period"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of any of the Prepetition Debt or the Prepetition 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 any of the Prepetition Secured Parties or their respective subsidiaries, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a "Representative" and, collectively, the "Representatives") in connection with matters related to the Prepetition Credit Documents, the Prepetition Debt, the Prepetition 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.</p> <p>If no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding then: (a) the Debtors' stipulations, admissions, agreements and releases contained in the Interim Order, shall be binding on all parties in interest, including, without limitation, the Creditors' Committee (if any).</p> <p>If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in the Interim Order, 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, including the Creditors' Committee (if any), and on any other person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Interim Order ¶ 26.</p>

Material Terms ⁴	Summary of Relevant Provisions
<p>Milestones <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p>In addition to customary milestones relating to entry of the Interim and Final Order and other procedural matters, the DIP Credit Agreement contains the following milestones:</p> <ol style="list-style-type: none"> 1. No later than July 31, 2019, the Debtors shall have filed the Annual Report on Form 10-K for the fiscal year ended December 31, 2018, and the Quarterly Report on Form 10-Q for the quarter ended March 31, 2019 of the Parent Guarantor and its subsidiaries with the Securities and Exchange Commission. The Annual Report on Form 10-K for the fiscal year ended December 31, 2018 will include the audited consolidated financial statements of the Parent Guarantor and its subsidiaries accompanied by an opinion of its Accountants. All such reports shall have been prepared in all material respects in accordance with all of the rules and regulations applicable to such reports. 2. Plan Filing Deadline: 7 business days after Petition Date. 3. Final Order: 35 days after the Petition Date 4. Disclosure Statement Hearing Deadline: 37 days after Plan Filing Deadline. 5. Disclosure Statement Approval Deadline: 3 days after Disclosure Statement Hearing Deadline. 6. Rejection of railcar leases with consent of Required Lenders: 60 days after Petition Date. 7. Confirmation Deadline: 35 days after Disclosure Statement Approval Deadline. 8. Effective Date: The earlier of (i) 15 days after the Confirmation Deadline and (ii) 100 days after the Petition Date. 9. Parent Guarantor shall make each of the filings with the Securities and Exchange Commission required by law to maintain compliance with its current registration and reporting requirements, and shall not take any action that would cause the Parent Guarantor to cease being a public reporting company under the rules and regulations of the Securities and Exchange Commission. All such filings shall have been prepared in all material respects in accordance with the rules and regulations applicable to such filings. <p>DIP Credit Agreement § 6.16.</p>
<p>Waiver of the Automatic Stay <i>Fed. R. Bankr. P. 4001(c)(1)(B)(iv)</i></p>	<p>Upon the occurrence and during the continuance of an Event of Default under the DIP Documents, the DIP Requisite Lenders may, among other remedies, upon five (5) days' written notice from the DIP Requisite Lenders (the "Remedies Notice Period") (which shall run concurrently with any notice required to be provided under the DIP Documents) via email to lead counsel to the Debtors (Latham & Watkins LLP), lead counsel to any official committee of unsecured creditors appointed in connection with the Chapter 11 Cases (the "Creditors' Committee"), and the U.S. Trustee to declare, in their sole and absolute discretion, that the automatic stay of Section 362 of the Bankruptcy Code shall be terminated automatically without further order of this Court, without the need for filing any motion for relief from the automatic stay or any other pleading, for the limited purpose of permitting the DIP Lenders to do any of the following: (1) foreclose on the DIP Collateral; (2) enforce all of the guaranty rights; (3) charge the default rate of interest on the DIP Loans; and (4) declare the principal of and accrued interest, fees and expenses constituting the obligations under the DIP Facility to be due and payable. Interim Order ¶ 14(d).</p>

Material Terms ⁴	Summary of Relevant Provisions
506(c) Waiver <i>Bankruptcy Rule 4001(c)(1)(B)(x); Local Rule 4001-2(a)(i)(C)</i>	Subject to and effective upon the entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent, the DIP Lenders, the Prepetition Revolver Agent, the Prepetition Lenders, the Prepetition Note Agent, or the Prepetition Noteholders, as applicable. Interim Order ¶ 15.
Equities of the Case <i>Local Rule 4001-2(a)(i)(H)</i>	Further, subject only to and effective upon entry of the Final Order, in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties. Interim Order ¶ 14(e).
Liens on Avoidance Actions <i>Local Rule 4001-2(a)(i)(D)</i>	Upon entry of the Final Order, the DIP Agent, for the benefit of the DIP Lenders, shall be granted DIP Liens in and upon the proceeds of all avoidance actions under chapter 5 of the Interim Order ¶ 13(a)(i).
Indemnification <i>Fed. R. Bankr. P. 4001(c)(ix)</i>	Subject to certain limitations, each Credit Party shall defend, protect, indemnify, pay and save harmless Agent, each Lender and each of their respective officers, directors, Affiliates, attorneys, employees and agents (each an “ Indemnified Party ”) for and from and against any and all Claims which may be imposed on, incurred by, or asserted against any Indemnified Party in arising out of or in any way relating to or as a consequence, direct or indirect, of: (a) the DIP Credit Agreement, the Other Documents, the Advances and other Obligations and/or the transactions contemplated hereby including the Transactions, (b) any action or failure to act or action taken only after delay or the satisfaction of any conditions by any Indemnified Party in connection with and/or relating to the negotiation, execution, delivery or administration of the DIP Credit Agreement and the Other Documents, the credit facilities and/or the transactions contemplated by the DIP Credit Agreement, (c) any Credit Party’s failure to observe, perform or discharge any of its covenants, obligations, agreements or duties under or breach of any of the representations or warranties made in this Agreement and the Other Documents, (d) the enforcement of any of the rights and remedies of Agent or any Lender under the Agreement and the Other Documents, (e) any threatened or actual imposition of fines or penalties, or disgorgement of benefits, for violation of any Anti-Terrorism Law by any Credit Party, any Affiliate or Subsidiary of any Credit Party, (f) any claim, litigation, proceeding or investigation instituted or conducted by any Governmental Body or instrumentality or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Other Documents, whether or not brought by any Credit Party, any director, equity holder or creditor thereof, any Indemnified Party or any other Person and whether or not any Indemnified Party is a party thereto and (g) arising from or incurred by reason of the handling of the financing arrangements of Borrowers as provided in Section 15.1 of the DIP Credit Agreement, reliance by Agent or any Lender on any request or instruction from Borrowing Agent or any other action taken by Agent or any Lender with respect to said Section 15.1. Credit Agreement § 16.5
Cross-Collateralization <i>Local Rule 4001-2(a)(i)(A)</i>	No provision of the DIP Credit Agreement, the Interim Order, or the Final Order grants cross-collateralization protection of the type contemplated by Local Rule 4001-2(a)(i)(A).

BASIS FOR RELIEF

A. Standards of Approval Under Sections 364(c) and 364(d)(1) of the Bankruptcy Code

15. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that a debtor seeking postpetition financing on a secured basis cannot “obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense.” 11 U.S.C. § 364(c).

16. In addition, under section 364(d)(1) of the Bankruptcy Code, courts may, after notice and a hearing, authorize a debtor to obtain postpetition credit secured by a “priming” lien from affected secured parties if (i) the debtor obtains the consent of such parties or (ii) the debtor cannot obtain credit elsewhere and the interests of existing lienholders are adequately protected. 11 U.S.C. § 364(d)(1). Specifically, section 364(d)(1) provides, in relevant part, that a court may, after notice and a hearing:

authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if-

(A) the [debtor] is unable to obtain credit otherwise; and

(B) 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).

17. In evaluating proposed postpetition financing under sections 364(c) and 364(d)(1) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider various factors including whether:

- i. unencumbered credit or alternative financing without superpriority status is available to the debtor;

- ii. the credit transactions are necessary to preserve assets of the estate;
- iii. the terms of the credit agreement are fair, reasonable, and adequate;
- iv. the proposed financing agreement was negotiated in good faith and at arm's-length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors' estate and their creditors; and
- v. the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., In re Aqua Assoc., 123 B.R. 192 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)); *In re Crouse Group, Inc.*, 71 B.R. 544 (Bankr. E.D. Pa. 1987) (same); *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003) (applying all factors in making a determination under section 364(d)).

18. Section 364 of the Bankruptcy Code also allows for postpetition financing secured by a priming lien. Section 364(d)(1) provides that the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt if:

- (A) the trustee is unable to obtain such credit otherwise; and
- (B) 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).

19. For the reasons discussed below, the Debtors satisfy the standards required to access postpetition financing on a superpriority claim and priming lien basis under sections 364(c) and 364(d) of the Bankruptcy Code.

i. The Debtors Cannot Obtain Financing on More Favorable Terms

20. In demonstrating that credit was not available without the protections afforded by section 364(c) or 364(d) of the Bankruptcy Code, a debtor need only make a good faith effort. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (approving

financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”); *In re Phoenix Steel Corp.*, 39 B.R. 218, 222 (D. Del. 1984) (holding the debtor satisfied its burden to show an inability to obtain credit on other terms through its time and effort spent trying to obtain credit on alternative terms and conditions).

21. Moreover, where 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 Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met).

22. As set forth above and in the Dunayer and Gaston Declarations, given their current financial condition, financing arrangements and capital structure, the Debtors were unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than those under the DIP Facility and the DIP Documents, and are not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. New credit is unavailable to the Debtors without providing the DIP Agent, for the benefit of the DIP Lenders, the (i) DIP Superpriority Claims and (ii) DIP Liens in the DIP Collateral, as provided herein and in the DIP Documents.

ii. The DIP Facility is Necessary to Preserve the Value of the Debtors' Estates

23. As debtors in possession, the Debtors have a fiduciary duty to protect and maximize their estates' assets. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The DIP Facility, if approved, will provide working capital critical to funding the Debtors' day-to-day operations. Without access to the DIP Facility, the Debtors will be forced to cease operations, which would result in immediate and irreparable harm to their business and deplete the going concern value of such business. The Debtors' ability to maintain business relationships with their vendors, suppliers, operators and managers, to make capital expenditures and to satisfy other working capital and operational needs and otherwise finance their operations is essential to the Debtors' continued viability. Because the Debtors' available and projected Cash Collateral is insufficient to fund their operations, the credit to be provided under the DIP Facility is necessary to preserve the value of the Debtors' estates for the benefit of all stakeholders.

iii. Terms of the DIP Facility are Fair, Reasonable and Adequate under the Circumstances

24. 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 proposed lender. *In re L.A. Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (stating that approval of the DIP Facility transaction requires terms that are "fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender"); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current

market conditions. *See Transcript of Record* at 740:4-6, *In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) (“[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of a DIP that included a roll-up of prepetition secured debt] reasonable here and now.”).

25. Given the urgent need of the Debtors to obtain financial stability for the benefit of all parties in interest, the terms of the DIP Facility are fair, appropriate, reasonable and in the best interests of the Debtors, their estates and their creditors. The DIP Documents were negotiated extensively by the Debtors and the DIP Lenders, in good faith and at arm’s length as required by section 364(e) of the Bankruptcy Code, with all parties represented by experienced counsel.

iv. Entry into the DIP Documents Reflects the Debtors’ Reasonable Business Judgment

26. A debtor’s decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del 1994) (noting that the interim loan, receivable facility and asset based facility were approved because they “reflect[ed] sound and prudent business judgment [were] reasonable under the circumstances and in the best interests of TWA and its creditors”); *Ames Dep’t Stores, Inc.*, 115 B.R. at 40 (“cases 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 parties in interest”); *Group of Institutional Holdings v. Chicago Mil. St. P. & Pac. Ry.*, 318 U.S. 523, 550 (1943); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985)

(“Business judgments should be left to the board room and not to this Court.”); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same).

27. Bankruptcy courts typically defer to debtors’ business judgment on the decision to borrow money unless such decision is arbitrary and capricious. *See In re Trans World Airlines, Inc.*, 163 B.R. at 974. In fact, “[m]ore exacting scrutiny would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate and threaten the court’s ability to control a case impartially.” *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

28. For the reasons set forth above, the Debtors submit that the entry into the DIP Facility is the exercise of the Debtors’ reasonable business judgment.

v. Proposed Adequate Protection is Appropriate

29. To the extent a secured creditor’s interests in the collateral constitute valid and perfected security interests and liens as of the Petition Date, section 364(d)(1)(B) of the Bankruptcy Code requires that adequate protection be provided where the liens of such secured creditor are being primed to secure the obligations under a debtor in possession financing facility. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. What constitutes adequate protection must be decided on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re O’Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). The focus of the requirement is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure

that the creditor receives the value for which he bargained prebankruptcy.”) (internal citations omitted).

30. The proposed adequate protection provided to the Prepetition Secured Parties comprises the following:⁵ (i) Adequate Protection Liens upon all of the DIP Collateral, subordinate in priority only to the DIP Liens and any liens to which the DIP Liens are Junior and to payment in full in cash of the Carve-Out, (ii) allowed superpriority administrative expense claims as provided for in Section 507(b) of the Bankruptcy Code with recourse to the DIP Collateral and subordinate to the payment in full in cash of the Carve-Out and the DIP Superpriority Claims; (iii) subject to the Carve-Out, payment of (x) all accrued and unpaid interest and fees at default rate under the Prepetition Credit Agreement and (y) all reasonable and documented fees, out-of-pocket expenses and disbursements of the Prepetition Secured Parties, upon entry of the Interim Order; (iv) ongoing payment postpetition of the fees, expenses, and disbursements payable to the Prepetition Secured Parties, subject to the Review Period; and (v) delivery of all required written financial reporting and other periodic reporting that is required to be provided to the DIP Agent or the DIP Lenders under the DIP Credit Agreement.

31. The Debtors believe that the adequate protection proposed herein to protect any diminution in value of the Prepetition Secured Parties' interest in the Prepetition Collateral is fair and reasonable. Further, in reliance upon, among other things, such adequate protection, the Prepetition Secured Parties have consented to the priming of Prepetition Liens. The consent of the Prepetition Secured Parties permits the Debtors to avoid potentially time-consuming and unpredictable priming litigation. The Prepetition Secured Parties' consent to the priming of their liens thus permits the Debtors to save considerable resources, not to mention avoid a delay, in

⁵ Adequate protection claims and liens maintain the prepetition priorities as between the Prepetition Lenders and the Prepetition Noteholders.

obtaining postpetition financing. Accordingly, based upon the foregoing, the Debtors respectfully request that the Court authorize the Debtors to provide the adequate protection described above to such parties.

B. Approval of Use of Cash Collateral is Appropriate

32. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell or lease cash collateral unless “(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.”

33. The Debtors have an urgent need for the immediate use of the Prepetition Collateral, including the Cash Collateral, and seek to use all Cash Collateral existing on or after the Petition Date pursuant to the terms of the DIP Documents. The Debtors need the Cash Collateral to pay operating expenses, including essential vendors, in order to ensure a continued supply of goods and services essential to the Debtors’ business. Indeed, absent such relief, the Debtors’ businesses will be brought to an immediate halt, with damaging consequences for the Debtors and their estates and creditors.

34. The Debtors believe that the terms and conditions of their use of the Cash Collateral (including the provision of adequate protection described above) are appropriate and reasonable and that such adequate protection is sufficient to secure any adequate protection obligations under the circumstances. Furthermore, the Prepetition Secured Parties have consented to the Debtors’ use of the Cash Collateral subject to the terms and conditions of the DIP Documents and the Interim Order. Therefore, the Debtors submit that they should be authorized to use the Cash Collateral on the terms set forth in the DIP Documents.

C. Modification of the Automatic Stay

35. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default under the DIP Credit Agreement, all rights and remedies provided in the DIP Credit Agreement without further order of or application to the Court. However, the DIP Agent must provide the Debtors and various other parties with five (5) business days' notice prior to exercising any enforcement rights or remedies in respect of their collateral. During such period, the Debtors and other parties in interest may contest whether an Event of Default has occurred and is continuing.

36. Stay modification provisions of this sort are common features of postpetition financing facilities and, in the Debtors' business judgment, are reasonable under these circumstances. Accordingly, the Debtors request that the Court modify the automatic stay to the extent contemplated by the DIP Credit Agreement and the proposed Interim Order and Final Order.

D. Approval of Interim Relief

37. Bankruptcy Rules 4001(b)(2) and 4001(c)(2) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than fourteen (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 use of cash collateral and the obtaining of credit on an interim basis "to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2); (c)(2).

38. As described above in some detail, the Debtors have an urgent and immediate need for cash in order to maintain business relationships with their vendors, suppliers, operators

and managers, to make capital expenditures and to satisfy other working capital and operational needs and otherwise finance their operations. Given the immediate and irreparable harm to be suffered by the Debtors, their estates and their creditors absent interim relief, the Debtors request that, pending the Final Hearing, the Court schedule an interim hearing within two (2) business days of the Petition Date or as soon thereafter as practicable to consider the interim relief requested in the Motion.

E. Request for a Final Hearing

39. The DIP Credit Agreement requires that a Final Order approving the Motion be entered within thirty (30) days after the Petition Date. As such, 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, but in no event later than thirty (30) days following the Petition Date, and fix the time and date prior to the Final Hearing for parties to file objections to the Motion.

RESERVATION OF RIGHTS

40. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Interim Order and Final Order once entered. Nothing contained in the Interim Order or the Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

CONSENT TO JURISDICTION

41. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

NOTICE

42. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the creditors listed on the Debtors' consolidated list of thirty creditors holding the largest unsecured claims; (v) counsel to the DIP Agent and the Prepetition Agents; (vi) counsel to Insight Equity; and (vii) all parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

43. No previous request for the relief sought herein has been made to this Court or any other court.

[The remainder of this page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Interim Order, substantially in the form attached hereto as Exhibit A, (ii) following the Final Hearing (if such hearing is required) enter the Final Order, and (iii) grant the Debtors such other and further relief as is just and proper.

Dated: July 16, 2019
Wilmington, Delaware

/s/ John H. Knight

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Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

Proposed Interim Order

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

	x	
<i>In re:</i>	:	
	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, et al.	:	Case No. 19– 11563 (KBO)
	:	
Debtors. ¹	:	(Joint Administration Requested)
	:	
	x	

**INTERIM ORDER (I) AUTHORIZING THE
DEBTORS TO (A) OBTAIN POSTPETITION FINANCING
AND (B) USE CASH COLLATERAL, (II) GRANTING CERTAIN
PROTECTIONS TO PREPETITION SECURED PARTIES, (III) SCHEDULING
A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”) of Emerge Energy Services Operating, LLC and Superior Silica Sands LLC (together, the “**Borrowers**”) and their affiliated debtors, each as a debtor and debtor-in-possession (collectively, the “**Debtors**”) in the above captioned cases (the “**Chapter 11 Cases**”), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, *et seq.* (as amended, the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rules 2002-1(b) and 4001-2 of the Bankruptcy Local Rules for the District of Delaware (the “**Local Bankruptcy Rules**”), seeking, among other things:

- A. authority for the Borrowers to obtain senior secured debtor-in-possession financing (the “**DIP Financing**”), and for Emerge Energy Services LP, the direct parent of the Borrowers and each direct and indirect subsidiary of the Borrowers that is a Debtor (each a “**Guarantor**” and, collectively in their capacities as such,

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

the “**Guarantors**”; the Guarantors collectively with the Borrowers, the “**Loan Parties**”² to unconditionally guaranty, on a joint and several basis, the Borrowers’ obligations in connection with the DIP Financing, consisting of a senior secured revolving credit facility (the “**DIP Facility**”), in an aggregate principal amount of up to \$35,000,000, plus any roll-up loans in an aggregate principal amount equal to the proceeds of Prepetition Collateral (as defined below) received on and after the closing date of the DIP Credit Agreement (collectively, the “**DIP Commitments**”), all on the terms and conditions set forth in this interim order (the “**Interim Order**”) and the DIP Documents (as defined below);

- B. authority for the Loan Parties to (A) execute and enter into the *Superpriority Senior Secured Debtor-in-Possession Credit Agreement*, among the Borrowers, the Guarantors, the lenders from time to time thereto (collectively, the “**DIP Lenders**”), and HPS Investment Partners, LLC, as administrative agent (the “**DIP Agent**” and, together with the DIP Lenders, the “**DIP Secured Parties**”), substantially in the form attached hereto as **Exhibit A** (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the “**DIP Credit Agreement**” and, together with any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other Credit Documents (as defined in the DIP Credit Agreement) and documents related thereto, the DIP Credit Agreement, the “**DIP Documents**”) and (B) perform all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Facility and the DIP Documents;
- C. authority to grant adequate protection to (i) HPS Investment Partners, LLC, in its capacity as administrative agent and collateral agent (the “**Prepetition Revolver Agent**”), and the lenders as of March 15, 2019 and from time to time thereafter (the “**Prepetition Lenders**”)³ party to that certain *Second Amended and Restated Revolving Credit and Security Agreement*, dated January 5, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, including most recently pursuant to that certain *Forbearance Agreement and Third Amendment to Second Amended and Restated Revolving Credit and Security Agreement*, dated as of February 28, 2019 (the “**Third Forbearance Agreement**”)) (together with any ancillary documents, security agreements, guarantees and pledge agreements in connection therewith, the “**Prepetition Revolving Credit Agreement**”), and (ii) HPS Investment Partners, LLC, in its capacity as administrative agent and note agent (the “**Prepetition Note Agent**” and, together with the Prepetition Revolver Agent, the “**Prepetition Agents**”), and the noteholders from time to time (collectively, the “**Prepetition**

² For the avoidance of doubt, the Loan Parties do not include Emerge Energy Services GP LLC.

³ For the avoidance of doubt, reference in this Interim Order to “Prepetition Lenders” does not include PNC Bank National Association and the lenders party to the Prepetition Revolving Credit Agreement (as hereinafter defined) prior to March 15, 2019.

Noteholders” and, together with the Prepetition Lenders, the “**Prepetition Secured Parties**”) party to that certain *Second Lien Note Purchase Agreement*, dated as of January 5, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, including most recently pursuant to that certain *Forbearance Agreement and Second Amendment to Second Lien Note Purchase Agreement*, dated as of January 31, 2019 (the “**Second Forbearance Agreement**”)) (together with any ancillary documents, security agreements, guarantees, pledge agreements and notes issued in connection therewith, the “**Prepetition Note Purchase Agreement**” and, together with the Prepetition Revolving Credit Agreement, the “**Prepetition Credit Documents**”);

- D. authority for the Borrowers to use net cash proceeds from the sale of any Prepetition Collateral (as defined below) or the proceeds from receivables to effect the Roll-Up (as defined below) and *thereafter* to pay accrued interest, principal and other amounts outstanding under the DIP Credit Agreement.
- E. subject to the restrictions set forth in the DIP Documents and this Interim Order, authority for the Loan Parties to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which any of the Prepetition Secured Parties have an interest and the granting of adequate protection to the Prepetition Agents on behalf of the Prepetition Secured Parties on the terms set forth in this Interim Order, with respect to, *inter alia*, such use of Cash Collateral and the other Prepetition Collateral;
- F. authority for the Debtors’ use of the proceeds of the DIP Facility pursuant to the DIP Credit Agreement and the other DIP Documents, including the Approved Budget (as defined below) (subject to permitted variances);
- G. subject to the payment in full in cash of the Carve-Out (as defined below), the granting to the DIP Secured Parties of allowed superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code, as further described herein, payable from and having recourse to all prepetition and postpetition property of the Loan Parties’ estates and all proceeds thereof (including, subject only to and effective upon entry of the Final Order (as defined below), any Avoidance Proceeds (as defined below));
- H. authority for the granting to the DIP Agent (for the benefit of the DIP Secured Parties) of liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on all prepetition and postpetition property of the Loan Parties’ estates and all proceeds thereof (other than the Avoidance Actions (as defined below), but including, subject only to and effective upon entry of the Final Order, any Avoidance Proceeds), in each case subject to the payment in full in cash of the Carve-Out;
- I. authority for the Loan Parties to pay, on a final and irrevocable basis, the principal, interest, fees, expenses and other amounts payable under the DIP

Documents as such become earned, due and payable, including, but not limited to, upfront fees, backstop fees, closing date fees, exit fees, prepayment fees, agency fees, audit fees, appraisal fees, valuation fees, administrative agent's fees, the reasonable fees and disbursements of the DIP Agent's and DIP Lenders' attorneys, all to the extent provided in, and in accordance with, the DIP Documents;

- J. approval of certain stipulations by the Debtors with respect to the Prepetition Credit Documents and the liens and security interests arising therefrom;
- K. subject only to and effective upon entry of the Final Order, as applicable, the waiver of (i) the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code (subject to the payment in full in cash of the Carve-Out), and (ii) any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;
- L. modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein and necessary to implement and effectuate the terms and provisions of this Interim Order and the DIP Documents; and
- M. the scheduling of a final hearing (the "**Final Hearing**") to be held within 30 days of the entry of the Interim Order to consider final approval, as applicable, of the Motion and the entry of a final order (the "**Final Order**") authorizing and approving the transactions described in the Motion and the DIP Documents.

The Court having reviewed the Motion, the exhibits attached thereto, the DIP Documents, the *Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, the Declaration of Adam L. Dunayer, Managing Director of Houlihan Lokey, in support of the Motion, and the Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in support of the Motion, and the evidence submitted and arguments made at the interim hearing held on July [●], 2019 (the "**Interim Hearing**"); and due and sufficient notice of the Motion and the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the opportunity for objection having been given under the circumstances; and the Interim Hearing having been held and concluded; and all objection, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and the 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 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 pending the Final Hearing, and is essential for the continued operation of the Debtors' business and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor;

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

1. *Disposition.* The relief requested in the Motion is granted on an interim basis as set forth herein. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry.

2. *Petition Date.* On July 15, 2019 (the "**Petition Date**"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Court**"). Each Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. *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(b) and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. *Committee Formation.* As of the date hereof, the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed an official committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”).

5. *Notice.* Notice of the Motion and the Interim Hearing has been provided in accordance with Local Bankruptcy Rule 9013-1(m)(iii), and no other or further notice of the Motion or the entry of this Interim Order 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.

6. *Debtors’ Stipulations.* Without prejudice to the rights of any party in interest and subject to the limitations thereon contained in paragraphs 26 and 27 below, the Debtors admit, stipulate and agree that:

(a) As of the Petition Date, the Loan Parties (other than Emerge Energy Services Finance Corporation) were indebted and jointly and severally liable to the Prepetition Secured Parties, without objection, defense, counterclaim or offset of any kind, as follows:

(i) *Prepetition Revolver Obligations.* Pursuant to the Prepetition Revolving Credit Agreement, the Prepetition Lenders provided to the Borrowers a facility for loans and advances and the cash collateralization of all outstanding letters of credit or letters of credit guaranties under the Prepetition Revolving Credit Agreement, in an aggregate principal amount of not less than \$75,000,000. As of the Petition Date, the Prepetition Lenders are owed an aggregate principal amount of not less than \$66,710,000, plus unliquidated amounts including interest thereon and fees, expenses, charges and other obligations incurred in connection with the Prepetition Revolving Credit Agreement (collectively, such obligations, the “**Prepetition Revolver Obligations**”), and the Borrowers and the Guarantors (other than Emerge Energy Services Finance Corporation) are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Prepetition Revolver Obligations. The commitments under the Prepetition Revolving Credit Agreement are terminated in full as of the Petition Date.

(ii) *Prepetition Revolver Liens.* To secure the Prepetition Revolver Obligations, the Borrowers and the Guarantors (other than Emerge Energy Services Finance Corporation) entered into various security and collateral documents pursuant to and in connection with the Prepetition Revolving Credit Agreement, pursuant to which the Prepetition Revolver Agent, for the benefit of itself and the Prepetition Lenders, was granted valid, binding, perfected, enforceable, first-priority liens and security interests in the Collateral (as defined in the Prepetition Revolving Credit Agreement and the Prepetition Note Purchase Agreement, as applicable) (such Collateral, the “**Prepetition Collateral**” and such liens and security interests, the “**Prepetition Revolver Liens**”). The Prepetition Revolver Liens granted in connection with the Prepetition Revolving Credit Agreement, are: (x) valid, binding, perfected, enforceable, first-priority liens, and security interests in the Prepetition Collateral; (y) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law; and (z) as of the Petition Date are subject and subordinate only to certain valid, perfected, and unavoidable liens permitted under the Prepetition Revolving Credit Agreement to the extent such liens are senior to or *pari passu* with the liens of the Prepetition Revolver Agent and the Prepetition Lenders on the Prepetition Collateral.

(iii) *Prepetition Note Obligations.* Pursuant to the Prepetition Note Purchase Agreement, the Borrowers issued notes to the Prepetition Noteholders and the Prepetition Noteholders made certain other financial accommodations to the Borrowers in an aggregate principal amount of not less than \$215,000,000. As of the Petition Date, the Prepetition Noteholders are owed the aggregate principal amount of not less than \$215,755,307, plus unliquidated amounts including interest thereon and fees, expenses, charges, Make Whole Amount and/or Applicable Redemption Premium (each as defined in the Prepetition Note Purchase Agreement), and other obligations incurred in connection with the Prepetition Note Purchase Agreement (collectively, such obligations, the “**Prepetition Note Obligations**” and, together with the Prepetition Revolver Obligations, the “**Prepetition Debt**”), and the Borrowers and the Guarantors (other than Emerge Energy Services Finance Corporation) are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Prepetition Note Obligations. The commitments under the Prepetition Note Purchase Agreement are terminated in full as of the Petition Date.

(iv) *Prepetition Note Liens.* To secure the Prepetition Note Obligations, the Borrowers and the Guarantors (other than Emerge Energy Services Finance Corporation) entered into various security and collateral documents pursuant to and in connection with the Prepetition Note Purchase Agreement, pursuant to which the Prepetition Note Agent, for the benefit of itself and the Prepetition Noteholders, was granted valid,

binding, perfected, enforceable, first-priority liens and security interests in the Prepetition Collateral (the “**Prepetition Note Liens**” and, together with the Prepetition Revolver Liens, the “**Prepetition Liens**”), subject to the Prepetition Revolver Liens as provided in the Intercreditor Agreement (as defined below). The Prepetition Note Liens granted in connection with the Prepetition Note Purchase Agreement, are: (x) valid, binding, perfected, enforceable, first-priority liens, and security interests in the Prepetition Collateral; (y) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law; and (z) as of the Petition Date are subject and subordinate only to certain valid, perfected, and unavoidable liens permitted under the Prepetition Note Purchase Agreement to the extent such liens are senior to or *pari passu* with the liens of the Prepetition Note Agent and the Prepetition Noteholders on the Prepetition Collateral.

(b) By virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Credit Documents, none of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor’s operations are conducted or are control persons or insiders of the Debtors.

(c) The Prepetition Debt constitutes the legal, valid, binding, non-avoidable and enforceable obligations of the Loan Parties (other than Emerge Energy Services Finance Corporation), and the Prepetition Liens are valid, binding, properly perfected, non-avoidable, and enforceable liens on and security interests in the Prepetition Collateral.

(d) All proceeds of the Prepetition Collateral and all cash and cash equivalent proceeds maintained in deposit or securities accounts subject to prepetition control agreements or otherwise within the control of the Prepetition Secured Parties, are “cash collateral” of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the “**Cash Collateral**”).

(e) The Prepetition Revolver Agent and the Prepetition Note Agent are party to that certain *First Lien/Second Lien Intercreditor Agreement*, dated as of January 5, 2018, and

acknowledged by Emerge Energy Services LP and the Borrowers (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the “**Intercreditor Agreement**”), to govern the respective rights, interests, obligations and priority of the Prepetition Secured Parties with respect to the Prepetition Collateral. Pursuant to the Intercreditor Agreement (a) the Prepetition Revolver Liens in respect of the Prepetition Collateral securing the Prepetition Revolver Obligations are senior to any Prepetition Note Lien in respect of the Prepetition Collateral securing the Prepetition Note Obligations, and (b) the Prepetition Note Liens in respect of the Prepetition Collateral securing the Prepetition Note Obligations are junior and subordinate in all respects to the Prepetition Revolver Liens in respect of the Prepetition Collateral securing the Prepetition Revolver Obligations.

(f) The liens granted by the Loan Parties to the DIP Agent on behalf of the DIP Lenders shall be valid, enforceable and non-avoidable liens against the Loan Parties.

(g) Events of default have occurred and are continuing under the terms of the Prepetition Revolver Credit Agreement and the Prepetition Note Purchase Agreement, as set forth in, but not limited to, those events of default described in the Third Forbearance and the Second Forbearance Agreement, respectively. The Prepetition Secured Parties expressly reserve all of their respective rights, powers, privileges and remedies under the Prepetition Credit Documents and/or applicable law.

7. *Release.* Effective as of the date of entry of the Final Order, but subject in all respects to paragraph 26 hereof, including the expiration of the Challenge Period, the Debtors and the Loan Parties hereby absolutely, unconditionally, and irrevocably release and forever discharge and acquit the Prepetition Secured Parties and their respective Representatives (as defined below) (collectively, the “**Released Parties**”) from any and all obligations and liabilities

to the Debtors (and their successors and assigns) and from any and all “claims” (as defined in the Bankruptcy Code), counterclaims, demands, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the Petition Date (including, without limitation, causes of action in the nature of “lender liability”), setoff, recoupment or other offset rights against any and all of the Released Parties, of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the Prepetition Credit Documents, including, without limitation, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the deal reflected thereby, the Prepetition Collateral or the debtor-creditor relationship among any of the applicable Prepetition Secured Parties, on the one hand, and the Debtors, on the other hand, from the beginning of time until immediately preceding the entry of this Interim Order, 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 against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Interim Order (collectively, the “**Released Claims**”), whether such Released Claims are matured or unmatured.

8. *Findings Regarding the DIP Financing and Cash Collateral.*

(a) Good and sufficient cause has been shown for the entry of this Interim Order.

(b) The Loan Parties have an immediate need to obtain the DIP Financing and to continue to use the Prepetition Collateral (including Cash Collateral). The Loan Parties’ 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, including

paragraph 27 herein: (i) to consummate the transactions contemplated by the DIP Documents and pay related fees, costs and expenses, (ii) for working capital and other general corporate purposes of the Borrowers and the Guarantors during the pendency of the Chapter 11 Cases; (iii) make adequate protection payments as described in paragraph 18(d), and (iv) to pay certain fees and expenses of professionals retained by the Debtors, subject to the Carve-Out and for certain other prepetition and pre-filing expenses that are approved by the applicable Bankruptcy Court and consented to by the DIP Agent, in each case of the foregoing clauses (i), (ii), (iii) and (iv) in accordance with the Approved Budget (except as expressly provided in Paragraph 11 below with respect to Professional Fees) or otherwise with the prior written consent of the DIP Agent in its sole discretion. Except with the prior written consent of the DIP Agent in its sole discretion, the Debtors shall not be permitted to use the proceeds of the DIP Facility and the proceeds of Collateral in contravention of the provisions of the orders entered in the Chapter 11 Cases, including any restrictions or limitations on the use of proceeds contained therein. The Loan Parties' 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 going concern values of the Loan Parties. The Loan Parties' 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 access by the Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Facility and other financial accommodations provided under the DIP Documents are necessary and vital to avoid an immediate liquidation and for the preservation and maintenance of the going concern values of the Loan Parties and to a successful restructuring of the Loan Parties.

(c) The Loan Parties 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 unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Loan Parties are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code without the Loan Parties granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out, the DIP Liens and the DIP Superpriority Claims (as defined below) on the terms and conditions set forth herein, and granting the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this Interim Order and in the DIP Documents.

(d) Based on the Motion, the declarations filed in support of the Motion, 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 Loan Parties may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order and the DIP Documents, are in each case fair and reasonable, reflect the Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing available. The adequate protection provided in this Interim Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(e) To the extent such consent is required, the Prepetition Secured Parties have consented (or, where applicable, are deemed to have consented pursuant to the Intercreditor Agreement) to the use of Cash Collateral and the other Prepetition Collateral, the priming of the Prepetition Liens pursuant to section 364(d)(1) of the Bankruptcy Code, and the Debtors' entry

into the DIP Documents in accordance with and subject to the terms of this Interim Order and the DIP Documents.

(f) 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 Loan Parties, the Prepetition Secured Parties, the DIP Agent, and the DIP Lenders, and their respective advisors, and all of the Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation: (i) all loans made to and guarantees issued by the Loan Parties pursuant to the DIP Documents (collectively, the "**DIP Loans**") and (ii) any "**Obligations**" (as defined in the DIP Credit Agreement) of the Loan Parties owing to the DIP Agent, any DIP Lender or any of their respective affiliates, in accordance with the terms of the DIP Documents, including any obligations, to the extent provided for in the DIP Documents, to indemnify the DIP Agent or the DIP Lenders and to pay any fees, 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 (i) and (ii) collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Secured Parties 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 Agent and the DIP Lenders (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. The Prepetition Secured Parties have acted in good faith

regarding the DIP Financing and the Loan Parties' continued use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and the continued operation of their business (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 Parties (and the successors and assigns thereof) 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.

(g) The Prepetition Secured Parties are entitled to the adequate protection 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, the declarations filed in support of the Motion, and the record presented to the Court at the Interim Hearing, 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 Loan Parties' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral; *provided* that nothing in this Interim Order or the other DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties 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, (y) 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 (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties.

(h) Any net cash proceeds received by the Loan Parties from the sale of any Prepetition Collateral or the proceeds from receivables shall be (i) retained by the Loan Parties *and* (ii) deemed to repay, on a dollar-for-dollar basis, and discharge, until paid in full, the aggregate outstanding principal indebtedness under the Prepetition Revolving Credit Agreement, including the amount currently cash collateralizing all outstanding letters of credit or letters of credit guaranties thereunder and any interest accrued through the date of discharge *and* (iii) be deemed borrowed by the Borrowers and deemed funded by each DIP Lender in the exact same principal amount equal to the aggregate outstanding principal amount of the Prepetition Revolver Obligations held by such Lender on the date immediately prior to the deemed funding of such Roll-Up Loan, on a dollar-for-dollar basis, under the DIP Facility in accordance with the terms of the DIP Documents and this Interim Order (the “**Roll-Up Loans**”) (and clauses (i), (ii) and (iii) together, but without duplication, the “**Roll-Up**”). It is an exercise of the Loan Parties’ prudent business judgment consistent with their fiduciary duties to effect and consummate the Roll-Up.

(i) The Debtors have prepared and delivered to the DIP Agent and the DIP Lenders an initial budget (the “**Initial DIP Budget**”), a copy of which is attached hereto as **Exhibit B**. The Initial DIP Budget reflects the Debtors’ anticipated net cash flow and anticipated disbursements for each calendar week during the period from the Petition Date through and including the end of the eighteenth week following the Petition Date. The Initial DIP Budget may be modified, amended and updated from time to time in accordance with the DIP Credit Agreement, and once approved by, in form and substance reasonably satisfactory to the DIP Required Lenders,⁴ shall supplement and replace the Initial DIP Budget (the Initial DIP Budget

⁴ “**DIP Required Lenders**” means “Required Lenders” as defined in the DIP Credit Agreement.

and each subsequent approved budget, shall constitute without duplication, an “**Approved Budget**”). The Debtors believe that the Initial DIP Budget is reasonable under the facts and circumstances. The DIP Agent and 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.

(j) The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Bankruptcy Rule 4001-2(b). Absent granting the relief set forth in this Interim Order, the Loan Parties’ estates will be immediately and irreparably harmed. 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 Loan Parties’ estates and consistent with the Loan Parties’ exercise of their fiduciary duties.

9. *Authorization of the DIP Financing and the DIP Documents.*

(a) The Loan Parties are hereby authorized to execute, enter into and perform all obligations under the DIP Documents. The Borrowers are hereby authorized to borrow money (or deem to borrow, in the case of Roll-Up Loans) pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guaranty the Borrower’s obligations with respect to such borrowings, on an interim basis in the aggregate principal or face amount not to exceed \$7,500,000, and on a final basis an aggregate principal or face amount not to exceed \$35,000,000 plus any Roll-Up Loans in an aggregate principal amount equal to the proceeds of Prepetition Collateral and receivables received on and following the effectiveness of the DIP Credit

Agreement, which shall be used for all purposes permitted under the DIP Documents (and subject to the terms and conditions set forth herein and therein).

(b) In furtherance of the foregoing and without further approval of this Court, each Loan Party is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees that may be reasonably required or necessary for the Loan Parties' performance of their obligations under or related to the DIP Financing, including, without limitation:

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

(ii) 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 Loan Parties, the DIP Agent, and the DIP Required 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 (and any fees and other expenses (including any attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder;

(iii) the incurrence of, and the non-refundable payment to the DIP Agent or the DIP Lenders, as the case may be, of all fees including, without limitation, the Closing Fee and the DIP Fee (each as defined in the Fee Letter (as defined in the DIP Credit Agreement)) and the Commitment Fee (each as described in the DIP Credit Agreement) (which

fees shall be fully earned and approved upon entry of this Interim Order and shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Credit Agreement and the costs and expenses as may be due from time to time, including, without limitation, the fees and expenses of the professionals retained by any of the DIP Agent or DIP Lenders, 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 18(c) hereof; and

(iv) the performance of all other acts required under or in connection with the DIP Documents, including the granting of the DIP Liens and DIP Superpriority Claims and perfection of the DIP Liens as permitted herein and therein.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding and unavoidable obligations of the Loan Parties, enforceable against each Loan Party in accordance with the terms of the DIP Documents and this Interim Order. No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order to the DIP Agent and/or the DIP Lenders shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, 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.

(d) No DIP Lender or DIP Agent shall have any obligation or responsibility to monitor any Loan Party's use of the DIP Financing, and each DIP Lender or DIP Agent may rely upon each Loan Party's representations that the amount of DIP Financing requested at any time and the use thereof are in accordance with the requirements of this Interim Order, the DIP Documents, and Bankruptcy Rule 4001(c)(2).

10. *Application of Proceeds of Collateral.* As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties have agreed that as of and commencing on the date of entry of the Final Order, and to the extent set forth therein, the Debtors shall apply the proceeds of DIP Collateral solely in accordance with the Final Order, the DIP Documents, and the Approved Budget, including, to effect the Roll-Up and *thereafter* to pay accrued interest, principal and other amounts outstanding under the DIP Credit Agreement.

11. *Carve-Out*

(a) As used in this Interim Order, the term "**Carve-Out**" shall mean the sum of the following:

- (i) Clerk and U.S. Trustee Fees. 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 and section 3717 of title 31 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iv) below).
- (ii) Chapter 7 Trustee Fees. All reasonable and documented fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code and allowed by this Court in an amount not to exceed \$50,000 (without regard to the notice set forth in (iv) below);
- (iii) Allowed Professional Fees Incurred Prior to Carve-Out Trigger Notice. To the extent allowed by this Court at any time, whether

by interim order, procedural order or otherwise, all accrued and unpaid claims for fees, costs, and expenses incurred by persons or firms retained by the Debtors pursuant to sections 327, 328 or 363 of the Bankruptcy Code (collectively, the “**Debtor Professionals**”) and retained by any official committee appointed in the Bankruptcy Cases pursuant to section 1103 of the Bankruptcy Code (collectively, the “**Committee Professionals**” and, together with the Debtors Professionals, the “**Professional Persons**,” and the fees, costs and expenses of Professional Persons other than any such financing transaction fees attributed to the Debtors securing the DIP Facility, the “**Professional Fees**”), at any time on or prior to the first business day after delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by this Court before or after delivery of a Carve-Out Trigger Notice and without regards to whether such fees, costs, and expenses are provided for in the Approved Budget or were invoiced after the Carve-Out Trigger Date (as defined below). For purposes of the Carve-Out, Professional Fees shall exclude any restructuring, sale, financing transaction fee related to the DIP Facility, success or similar fee of any Professional Person.

- (iv) Allowed Professional Fees Incurred After a Carve-Out Trigger Notice. Any Professional Fees of the Professional Persons incurred after the first Business Day following delivery by the DIP Agent of the Carve-Out Trigger Notice (as defined below), to the extent allowed by this Court at any time, whether by interim order, procedural order or otherwise, in an aggregate amount not to exceed \$1,000,000 (the amount set forth in this clause (iv) being the “**Post Carve-Out Cap**”), in each case subject to the limits imposed by paragraph 27 of this Interim Order; *provided*, that nothing herein shall be construed to impair the ability of any party to object to the allowance of the fees, expenses, reimbursement or compensation described in (i), (ii) or (iii) above on any other grounds.

(b) Without limiting or altering the scope of sub-paragraph (a) above or sub-paragraph (h) below, on a bi-weekly basis, starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the DIP Agent a statement setting forth a good-faith estimate of the amount of fees and expenses incurred during the preceding two weeks by such Professional Person (through Saturday of such week, the “**Calculation Date**”) (collectively, “**Estimated Fees and Expenses**”), 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 “**Bi-Weekly Statement**”); provided, that within two business days of the occurrence of the Carve-Out Trigger Date (as defined herein), each Professional Person shall deliver one additional 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 Bi-Weekly Statement has been delivered and concluding on the Carve-Out Trigger Date.

(c) Upon the occurrence and during the continuance of any Event of Default under the DIP Documents, the DIP Agent may deliver a written notice by email (or other electronic means) invoking the Post Carve-Out Cap (the “**Carve-Out Trigger Notice**”) to the Debtors, the Debtors’ lead restructuring counsel retained in the Chapter 11 Cases (Latham & Watkins LLP), the office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), and lead counsel to any official committee appointed in the Chapter 11 Cases. The Carve-Out Trigger Notice shall describe the Event of Default that is alleged to continue under the DIP Documents (or after the payment in full of the DIP Obligations, the Prepetition Revolver Agent describing the reason for terminating the use of Cash Collateral), and shall expressly state that the Post Carve-Out Cap has been invoked, and such notice may be delivered only on and during the continuation of an Event of Default under the DIP Documents and the termination of funding under the DIP Facility (or after the payment in full of the DIP Obligations, the termination of the use of Cash Collateral by the Prepetition Revolver Agent).

(d) On the day on which a Carve-Out Trigger Notice is received by the Debtors (such date, the “**Carve-Out Trigger Date**”), the Carve-Out Trigger Notice shall

constitute a demand to the Debtors to utilize all cash on hand to transfer to the Professional Fees Account (as defined below) cash in an amount equal to all obligations benefitting from the Carve-Out as more fully set forth below.

(e) On and after the Carve-Out Trigger Date, the DIP Agent shall deposit into a segregated account of the Debtors not subject to the control of the DIP Agent, any DIP Lender or any Prepetition Secured Party (the “**Professional Fees Account**”) any cash swept or foreclosed after delivery of the Carve-Out Trigger Notice (including cash received as a result of the sale or other disposition of any assets) until the Professional Fees Account has been fully funded (inclusive of any amounts on deposit therein prior to the issuance of such Carve-Out Trigger Notice) in an amount equal to all obligations benefitting from the Carve-Out. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following delivery of a Carve-Out Trigger Notice, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties 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 Professional Fees Account has been fully funded in an amount equal to all obligations benefitting from the Carve-Out.

(f) Funds transferred to the Professional Fees Account shall be held in trust for the Professional Persons, including with respect to obligations arising out of the Carve-Out. Funds transferred to the Professional Fees Account shall not be subject to any liens or claims granted herein or under the DIP Documents to the DIP Agent, DIP Lenders or Prepetition Secured Parties or any liens or claims granted as adequate protection, shall not constitute DIP Collateral, and shall not constitute Cash Collateral; provided that the DIP Collateral shall include the DIP Agent’s (on behalf of itself and the DIP Lenders) and the Prepetition Secured Parties’ reversionary interest in funds held in the Professional Fees Account, if any, after all allowed

Professional Fees benefitting from the Carve-Out have been paid in full in cash pursuant to a final order not subject to appeal.

(g) Except to the extent expressly provided by further order of this Court, the Debtors may use funds held in the Professional Fees Account only to pay Professional Fees as they become allowed and payable pursuant to any interim or final orders of this Court, and not for any other purpose until all obligations and liabilities benefitting from the Carve-Out are paid and satisfied in full in cash.

(h) Further, notwithstanding anything to the contrary in this Interim Order, the DIP Documents, or the Prepetition Credit Documents, (i) the failure of the Professional Fees Account to be funded in an amount equal to the full amount of the Professional Fees benefitting from the Carve-Out shall not affect the priority of the Carve-Out, (ii) in no way shall the Carve-Out, Professional Fees Account, or the Approved Budget or any of the foregoing (or any good-faith estimate of Professional Fees) be construed as a cap or limitation on the amount of the Professional Fees due and payable by the Debtors or that may be allowed by this Court at any time (whether by interim order, final order, or otherwise), and (iii) the Debtors' authority to use proceeds from the DIP Facility, the DIP Collateral, and/or Cash Collateral on account of and to timely pay Professional Fees and the obligations benefitting from the Carve-Out shall in no way be limited or deemed limited by the Approved Budget or any good-faith estimate of Professional Fees.

(i) So long as a Carve-Out Trigger Notice has not been delivered as provided above: (i) the Debtors shall be permitted to pay Professional Fees allowed and payable under sections 328, 330 or 331 of the Bankruptcy Code or other order of this Court, as the same may become due and payable, including on an interim basis; and (ii) such payments shall not reduce,

or be deemed to reduce, the Carve-Out. Without prejudice to the rights of any Professional Person to contest any such objection, nothing in this Interim Order shall be construed to impair the ability of any creditor or party in interest to object to any Professional Fees.

(j) Notwithstanding anything to the contrary in this Interim Order, the DIP Documents, or the Prepetition Credit Documents, any and all DIP Obligations, Adequate Protection Claims, and Prepetition Debt (and any and all other claims (as defined in Section 101(5) of the Bankruptcy Code), whenever accrued or arising, of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties against any Loan Party) and any and all security interests and liens securing the same, in each case, whether arising or granted in connection with postpetition financing, adequate protection, or otherwise, shall be subject to the Carve Out.

(k) Notwithstanding anything to the contrary in this Interim Order or the DIP Documents, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (i) the investigation (other than, prior to the Carve-Out Trigger Date, as permitted under paragraph 27 of this Interim Order), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation, or assertions of any defense or counterclaim, against any of the DIP Lenders, the DIP Agent, the Prepetition Lenders or the Prepetition Revolver Agent, the Prepetition Noteholders or the Prepetition Note Agent, each in such capacity, and their respective agents, attorneys, advisors or representatives each in such capacity, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, and their respective agents, attorneys, advisors or representatives, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the DIP Documents or the Prepetition Credit Documents,

including without limitation the Prepetition Revolver Obligations and the Prepetition Note Obligations, (whether in such capacity or otherwise), including, in each case, without limitation, for lender liability or pursuant to section 105, 506(c), 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, (ii) attempts to modify any of the rights granted to the DIP Lenders, the DIP Agent, the Prepetition Lenders or the Prepetition Revolver Agent, or the Prepetition Noteholders or the Prepetition Note Agent hereunder or under the applicable DIP Documents or Prepetition Credit Documents (other than in connection with an Approved Chapter 11 Plan), (iii) attempts to prevent, hinder or otherwise delay any of the DIP Lenders' or the DIP Agent's assertion, enforcement or realization upon any DIP Collateral or Prepetition Collateral in accordance with the DIP Documents, this Interim Order or the Final Order, other than to seek a determination that an Event of Default has not occurred or is not continuing, or (iv) paying any amount on account of any claims arising before the commencement of the Chapter 11 Cases unless such payments are approved by an order of the Court and permitted under the DIP Documents (including the Approved Budget).

12. *DIP Superpriority Claims.* The DIP Agent and the DIP Lenders are hereby granted, against each of the Debtors on a joint and several basis, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claims for all of the DIP Obligations (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, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) (including the Prepetition 507(b) Claim (as defined below)) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the

Bankruptcy Code (including the Adequate Protection Obligations (as defined below)), 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 Loan Parties and all proceeds thereof (excluding the Loan Parties’ 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 (collectively, “**Avoidance Actions**”), but, subject only to and effective upon entry of the Final Order, including any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement or otherwise (“**Avoidance Proceeds**”), subject only to payment in full in cash of the Carve-Out. 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.

13. *DIP Liens.*

(a) As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings by the Loan Parties 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 of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (i), (ii) and (iii) below being

collectively referred to as the “**DIP Collateral**”), subject only to payment in full in cash of the Carve-Out (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “**DIP Liens**”):

(i) First Lien on Unencumbered Property. 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 Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date (including pursuant to Section 546(b) of the Bankruptcy Code), is not subject to a valid, perfected and non-avoidable lien (collectively, “**Unencumbered Property**”), including, without limitation, any and all unencumbered cash of the Loan Parties and any investment of such cash, 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 of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Avoidance Actions, including, but subject only to and effective upon entry of the Final Order, the Avoidance Proceeds;

(ii) Priming Liens on Prepetition Collateral. 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

each Loan Party (including, without limitation, any and all cash and cash collateral and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including, without limitation, post-petition intercompany claims against the Loan Parties and their non-Debtor affiliates), 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 the foregoing), whether now existing or hereafter acquired, that is subject to the Prepetition Liens, which lien shall be senior in all respects to such Prepetition Liens. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties (including, without limitation, the Adequate Protection Liens granted hereunder);

(iii) Liens Junior to Certain Other Liens. 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 each Loan Party that, on or as of the Petition Date (including pursuant to Section 546(b) of the Bankruptcy Code), is subject to valid, perfected and unavoidable liens senior to the Prepetition Liens in existence immediately prior to the Petition Date (the “**Senior Liens**”), if any; *provided* that, nothing in the foregoing shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such Senior Liens are not permitted thereunder; and

(iv) Liens Senior to Certain Other Liens. The DIP Liens shall not be (a) subject or subordinate to or made *pari passu* with (1) any lien or security interest that is

avoided and preserved for the benefit of the Loan Parties and their estates under section 551 of the Bankruptcy Code, (2) unless otherwise provided for in the DIP Documents or in this Interim Order, or unless otherwise required by Section 546(b) of the Bankruptcy Code or applicable non-bankruptcy law, any liens or security interests arising after the Petition Date, including, without limitation, 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 Loan Parties, or (3) any intercompany or affiliate liens or security interests of the Loan Parties; or (b) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

14. *Protection of DIP Lenders' Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding Commitments (as defined in the DIP Credit Agreement) under the DIP Credit Agreement, 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 Credit Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral or the Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP Obligations and termination of the Commitments), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) 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 such DIP Collateral unless, solely as to this clause (iii), the DIP Agent or the DIP Lenders file

financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date; and (iv) at the request of the DIP Agent, deliver or cause to be delivered, at the Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent or the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such DIP Collateral subject to any sale or disposition.

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

(c) Any proceeds of Prepetition Collateral received by the Prepetition Agents or any Prepetition Secured Party in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by the Prepetition Agents 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 Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Agent is hereby authorized to make any such endorsements as agent for each of the Prepetition

Agents or any such Prepetition Secured Party. This authorization is coupled with an interest and is irrevocable.

(d) Upon the occurrence and during the continuance of an Event of Default under the DIP Documents, the DIP Required Lenders may, in their sole and absolute discretion, take any or all of the following actions: (i) immediately (1) deliver a notice of an Event of Default, (2) terminate any pending Commitments, (3) terminate the DIP Facility, and (4) terminate the use of Cash Collateral; (ii) exercise their unqualified right to credit bid up to the full amount of the outstanding DIP Obligations (including any accrued interest), which credit bid may, with the consent of the applicable Prepetition Agent, incorporate a credit bid of the Prepetition Obligations, in any sale of the DIP Collateral (or any part thereof), without the need for further Court order authorizing the same, and whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise, and (iii) upon five (5) days' written notice from the DIP Required Lenders (the "**Remedies Notice Period**") (which shall run concurrently with any notice required to be provided under the DIP Documents) via email to lead counsel to the Debtors (Latham & Watkins LLP), lead counsel to any official committee of unsecured creditors appointed in connection with the Chapter 11 Cases (the "**Creditors' Committee**"), and the U.S. Trustee to declare, in their sole and absolute discretion, that the automatic stay of Section 362 of the Bankruptcy Code shall be terminated automatically without further order of this Court, without the need for filing any motion for relief from the automatic stay or any other pleading, for the limited purpose of permitting the DIP Lenders to do any of the following: (1) foreclose on the DIP Collateral; (2) enforce all of the guaranty rights; (3) charge the default rate of interest on the DIP Loans; and (4) declare the principal of and accrued interest, fees, and expenses constituting the obligations

under the DIP Facility to be due and payable. In any hearing regarding any exercise of rights or remedies under the DIP Documents, the only issue that may be raised by the Debtors in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors and the Prepetition Secured Parties hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the DIP Agent or the DIP Lenders set forth in this Interim Order or the DIP Documents. Subject to entry of the Final Order, in no event shall the DIP Agent, the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral. Further, subject only to and effective upon entry of the Final Order, in no event shall the “equities of the case” exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties.

(e) No rights, protections or remedies of the DIP Agent or the DIP Lenders granted by the provisions of this Interim Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Loan Parties’ authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Loan Parties’ authority to continue to use Cash Collateral; or (iii) except to the extent expressly set forth therein, the terms of any other order or stipulation related to the Loan Parties’ continued use of Cash Collateral or the provision of adequate protection to any party.

15. *Limitation on Charging Expenses Against Collateral.* Subject to and effective upon the entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be

charged against or recovered from the DIP Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent, the DIP Lenders, the Prepetition Revolver Agent, the Prepetition Lenders, the Prepetition Note Agent, or the Prepetition Noteholders, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Prepetition Revolver Agent, the Prepetition Lenders, the Prepetition Note Agent, or the Prepetition Noteholders and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Agent, the DIP Lenders, the Prepetition Revolver Agent, the Prepetition Lenders, the Prepetition Note Agent, or the Prepetition Noteholders to any charge, lien, assessment or claim against the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise.

16. *Payments Free and Clear.* Subject to the Carve-Out and pending entry of the Final Order with respect to section 506(c) of the Bankruptcy Code, any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Lenders pursuant to and in accordance with the provisions of this Interim Order or Final Order (if and when entered) or the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code (subject to entry of the Final Order, and to the extent set forth therein, approving the waiver of the Debtors' rights under sections 506(c) and 552(b) of the Bankruptcy Code), whether asserted or assessed by, through or on behalf of the Debtors.

17. *Use of Cash Collateral.* The Loan Parties are hereby authorized, subject to the terms and conditions of this Interim Order, to use all Cash Collateral and the Prepetition Secured

Parties are directed promptly to turn over to the Loan Parties all Cash Collateral received or held by them; *provided* that (a) the Prepetition Secured Parties are granted the adequate protection as hereinafter set forth and (b) except on the terms and conditions of this Interim Order, the Loan Parties shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court.

18. *Adequate Protection of Prepetition Secured Parties.* The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any ("**Diminution in Collateral Value**"), for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the depreciation, sale, lease or use by the Loan Parties (or other decline in value) of the Prepetition Collateral, the priming of the Prepetition Secured Parties' security interests and liens on the Prepetition Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Interim Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the "**Adequate Protection Claims**"). In consideration of the foregoing, to the extent of any Diminution in Collateral Value, each of the Prepetition Revolver Agent, for the benefit of the Prepetition Lenders, and the Prepetition Note Agent, for the benefit of the Prepetition Noteholders, are hereby granted, as applicable, the following (collectively, the "**Adequate Protection Obligations**"):

(a) Prepetition Adequate Protection Liens. The Prepetition Revolver Agent (for itself and for the benefit of the Prepetition Lenders) is hereby granted (effective and

perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Lenders' Adequate Protection Claim, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral including, without limitation, Unencumbered Property and, subject to entry of the Final Order, the Avoidance 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 Senior Liens, if any, and (ii) the payment in full in cash of the Carve-Out (the "**Prepetition Lenders Adequate Protection Liens**"). The Prepetition Note Agent (for itself and for the benefit of the Prepetition Noteholders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Noteholders' Adequate Protection Claim, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral including, without limitation, Unencumbered Property and, subject to entry of the Final Order, the Avoidance Proceeds, in each case subject and subordinate only to (i) the DIP Liens, (ii) any prepetition liens that are senior in priority to the Prepetition Note Liens, including the Prepetition Revolver Liens and the Senior Liens, if any, (iii) the Prepetition Lenders Adequate Protection Liens, and (iv) the payment in full in cash of the Carve-Out (collectively, the "**Prepetition Note Adequate Protection Liens**" and, together with the Prepetition Lenders Adequate Protection Liens, the "**Adequate Protection Liens**"). For the avoidance of doubt, the Prepetition Note Adequate Protection Liens shall be subordinated to the Prepetition Lenders Adequate Protection Liens on the same basis as all other Prepetition Liens securing the claims of the Prepetition

Noteholders are so subordinated to the liens securing the Prepetition Revolver Obligations owed to the Prepetition Lenders.

(b) Prepetition Section 507(b) Claim. The Prepetition Revolver Agent (for itself and the benefit of the Prepetition Lenders) and the Prepetition Note Agent (for itself and the benefit of the Prepetition Noteholders) are hereby granted, subject to the payment in full in cash of the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claims 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 (the “**Prepetition 507(b) Claim**”), which Prepetition 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, without limitation, subject to entry of the Final Order, the Avoidance Proceeds. The Prepetition 507(b) Claim shall be subject and subordinate to the payment in full in cash of the Carve-Out and the DIP Superpriority Claims. Except to the extent expressly set forth in this Interim Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition 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 the Carve-Out) have indefeasibly been paid in cash in full and all Commitments have been terminated.

(c) Prepetition Secured Parties’ Fees and Expenses. Without duplication of amounts required to be paid pursuant to the DIP Documents, (i) upon entry of this Interim Order, the Loan Parties shall pay in cash all fees, expenses, and disbursements payable to the

Prepetition Secured Parties, including all fees, expenses, and disbursements payable to the Prepetition Agents and all professional fees and expenses of the Prepetition Secured Parties (including the fees and expenses of Weil, Gotshal & Manges LLP and Pachulski, Stang, Ziehl & Jones LLP, in each case, whether accrued prior to or after the Petition Date). The post-petition payment of the fees, expenses and disbursements set forth in the foregoing sentence, along with the professional fees and expenses of the DIP Secured Parties, shall be made within ten (10) days (which time period may be extended by the applicable professional) upon the receipt by the Debtors, the Creditors' Committee (if any) and the U.S. Trustee (the "**Review Period**") of invoices therefor (the "**Invoiced Fees**") and without the necessity of filing formal fee applications, including such amounts arising before or after the Petition Date. The invoices for such Invoiced Fees shall include the number of hours billed (except for financial advisors compensated on other than an hourly basis) and a reasonably detailed description of services provided and the expenses incurred by the applicable professional; *provided, however*, that any such invoice: (i) may be redacted to protect privileged, confidential or proprietary information and (ii) shall not be required to contain individual time detail. The Debtors, the Creditors' Committee (if any) and the U.S. Trustee may object to any portion of the Invoiced Fees (the "**Disputed Invoiced Fees**") within the Review Period by written notice to the applicable professional or by filing with the Court a motion or other pleading, on at least ten (10) days' prior written notice to the applicable Prepetition Secured Party and the applicable professional of any hearing on such motion or other pleading, setting forth the specific objections to the Disputed Invoiced Fees in reasonable narrative detail and the bases for such objections; *provided*, that payment of any undisputed portion of Invoiced Fees shall be paid within the time frame set forth above and shall not be delayed based on any objections thereto; *provided, further*,

that the applicable parties shall endeavor in good faith to consensually resolve any such dispute prior to the filing of any such motion or pleading.

(d) Prepetition Secured Parties' Adequate Protection Payment and Interest Accrual. Subject to the Carve Out, as further adequate protection, the Debtors shall provide adequate protection to the applicable Prepetition Secured Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (a) to the Prepetition Revolver Agent, on behalf of the Prepetition Lenders, all accrued and unpaid interest and fees at the "Default Rate" and as provided under the Prepetition Revolving Credit Agreement (*provided* that, interest shall cease to accrue under the Prepetition Revolving Credit Agreement on any Roll-Up Loans, and such Roll-Up Loans shall accrue interest under and in accordance with the terms of the DIP Credit Agreement), and (b) immediately upon entry of this Interim Order, to the Prepetition Secured Parties, payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including, without limitation, the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third party consultants, and other vendors) incurred by the Prepetition Secured Parties, whether arising prior to or after the Petition Date.

(e) Information Rights. The Debtors shall promptly provide the Prepetition Revolver Agent, on behalf of itself and the Prepetition Lenders, and the Prepetition Note Agent, on behalf of itself and the Prepetition Noteholders, with all required written financial reporting and other periodic reporting that is required to be provided to the DIP Agent or the DIP Lenders under the DIP Credit Agreement.

19. *Adequate Protection Finding*. Subject to the Carve Out, 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 Parties hereunder is insufficient to compensate for any diminution in value of their respective interests in the Collateral during the Chapter 11 Cases. 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 and sufficient to protect the interests of the Prepetition Secured Parties.

20. *Consent to Adequate Protection; Right to Seek Additional Adequate Protection; No Admission.* The Prepetition Secured Parties have consented to the Adequate Protection Obligations, the priming of the Prepetition Liens by the DIP Liens, and the use of Cash Collateral; *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; and *provided, further*, that such consent shall be of no force and effect in the event this Interim Order is not entered or is entered and subsequently reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the Prepetition Revolver Agent, the Prepetition Lenders, the Prepetition Note Agent, and the Prepetition Noteholders) or the DIP Documents and DIP Facility as set forth herein are not approved. This Interim Order: (i) is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of each of the Prepetition Secured Parties to request additional or alternative forms of adequate protection from the Loan Parties, and the Loan Parties' and any other party in interest's right to object to such requests are hereby preserved; and (ii) shall not be deemed an admission, acknowledgement, or stipulation by the Prepetition

Secured Parties that the Prepetition Secured Parties are in fact adequately protected by the terms and conditions of this Interim Order or otherwise.

21. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Loan Parties, 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, or 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 under the DIP Documents or this Interim Order. Whether or not the DIP Agent, on behalf of the DIP Lenders or the Prepetition Secured Parties shall, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, 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, 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 (subject to paragraph 26 below). Upon the request of the DIP Agent, each of the Prepetition Secured Parties and the Loan Parties, without any further consent of any party, is authorized (in the case of the Loan Parties) and directed (in the case of the Prepetition Secured Parties) to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Agent, 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 shall 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 vacated and modified to the extent necessary to permit the DIP Agent to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

(c) 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 any Debtor is a party, or any such relevant Debtor's rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (x) the abandonment, invalidation, unenforceability or other impairment of any right, title or interest of any Debtor therein or (y) in 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 (x) and (y), 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* that the DIP Liens, Prepetition Lenders Adequate Protection Liens, the DIP Superpriority Claims, and the Prepetition 507(b) Claim shall in all events attach to and have recourse from all proceeds, products, offspring or profits from any and all Specified Contracts (including from the sale, transfer, disposition or monetization thereof).

22. *Proceeds of Subsequent Financing.* If the Debtors, any trustee, any examiner with enlarged powers, 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) in violation of the DIP Documents at any time prior to the repayment in full in cash of all DIP Obligations and the termination of the DIP Lenders' obligation to extend credit under the DIP Facility, 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, then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent, for the benefit of itself and the DIP Lenders, to be applied as set forth the DIP Documents and this Interim Order.

23. *Disposition of DIP Collateral; Rights of DIP Agent and DIP Lenders.* The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any DIP Collateral without the prior written consent of the DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence), except as expressly permitted in the DIP Documents.

24. *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 Agent and the DIP Lenders or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding. No postpetition lien or security interest shall be granted by the Debtors to any other party in any of the Specified Contracts without first granting such lien or security interest to the DIP Agent, the DIP Lenders or the Prepetition Secured Parties (solely with respect to the Adequate Protection Obligations), as applicable.

(b) Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise: (i) the DIP Superpriority Claims, the Prepetition 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 and Adequate Protection Obligations shall have been indefeasibly paid in full in cash (and such DIP Superpriority Claims, Prepetition 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 retain 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 prior to the actual receipt of written notice by the DIP Agent, the Prepetition Revolver Agent or the Prepetition Note Agent 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 any Loan Party to or for the benefit of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Prepetition Revolver Agent or the Prepetition Note Agent, 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 Agent, the DIP Lenders, and the Prepetition Secured Parties 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 Agent, the DIP Lenders, 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 any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of the Chapter 11 Cases or by any other act or omission of the Debtors; (ii) the entry of an order approving the sale of any DIP 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 any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Loan Parties 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 if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, 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 Agent, the DIP Lenders, and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP

Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the Commitments have been terminated.

25. *Cash Management.* Unless otherwise agreed by the DIP Agent or otherwise permitted by the DIP Documents, 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.

26. *Effect of Stipulations on Third Parties.* The Debtors’ stipulations, admissions, agreements, and releases contained in this Interim Order, including, without limitation, in paragraphs 6 and 7 of this Interim Order, shall be binding upon the Debtors and any successor thereto in all circumstances and for all purposes. The Debtors’ stipulations, admissions, agreements and releases contained in this Interim Order, including, without limitation, in paragraphs 6 and 7 of this Interim Order, shall be binding upon all other parties in interest, in all circumstances and for all purposes unless: (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 (subject to the limitations contained herein, including, *inter alia*, in this paragraph 26) by no later than (i) (x) with respect to parties in interest (other than the Creditors’ Committee) with requisite standing other than the Creditors’ Committee, 75 calendar days after entry of this Interim Order and (y) with respect to the Creditors’ Committee, 60 calendar days after the appointment of the Creditors’ Committee, if any, (ii) any such later date as has been agreed to, in writing, by the Prepetition Revolver Agent (with the consent of the Required

Lenders (as defined in the Prepetition Revolving Credit Agreement)) or the Prepetition Note Agent, as applicable, and (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable period of time set forth in this paragraph (the time period established by the foregoing clauses (i), (ii), and (iii), the “**Challenge Period**”), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of any of the Prepetition Debt or the Prepetition 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 any of the Prepetition Secured Parties or their respective subsidiaries, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a “**Representative**” and, collectively, the “**Representatives**”) in connection with matters related to the Prepetition Credit Documents, the Prepetition Debt, the Prepetition 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 prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding then: (a) the Debtors’ stipulations, admissions, agreements and releases contained in this Interim Order, including, without limitation, those contained in paragraphs 6 and 7 of this Interim Order, shall

be binding on all parties in interest, including, without limitation, the Creditors' Committee (if any); (b) the obligations of the Loan Parties under the Prepetition Credit Documents, including the Prepetition Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s), other than to payment in full in cash of the Carve-Out; (c) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens on the Prepetition Collateral, not subject to recharacterization, subordination, avoidance or other defense, other than to payment in full in cash of the Carve-Out; and (d) the Prepetition Debt and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by the Creditors' Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by the Creditors' Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Documents shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in this Interim

Order, including, without limitation, those contained in paragraphs 6 and 7 of this Interim Order, 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, including the Creditors' Committee (if any), and on any other person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Creditors' Committee (if any) or any non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Credit Documents, the Prepetition Debt or the Prepetition Liens.

27. *Limitation on Use of DIP Loans and DIP Collateral.* Notwithstanding any other provision of this Interim Order or any other order entered by this Court, no DIP Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, any Guarantor, any official committee appointed in the Chapter 11 Cases, or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (i) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (a) against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, in each case in such capacities, or any action purporting to do the foregoing in respect of the Prepetition Debt, the Prepetition Note Obligations, the Prepetition Second Lien Notes

Obligations, liens on the Prepetition Collateral, DIP Obligations, DIP Liens, DIP Superpriority Claims and/or the adequate protection obligations, adequate protection liens and superpriority claims granted to the Prepetition Lenders and the Prepetition Noteholders, 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 Revolver Obligations, Prepetition Note Obligations, the DIP Obligations and/or the liens, claims, rights, or security interests granted under this Interim Order, the Final Order, the DIP Documents, the Prepetition Credit Documents including, in each case, without limitation, 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 Creditors' Committee may investigate any potential challenges with respect to the Prepetition Credit Documents, the Prepetition Revolver Obligations, the Prepetition Note Obligations, the Prepetition Revolver Liens, and the Prepetition Note Liens during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed \$35,000 in the aggregate; (ii) to prevent, hinder, or otherwise delay the Prepetition Secured Parties', the DIP Agent's or the DIP Lenders', as applicable, enforcement or realization on the Prepetition Revolver Obligations, the Prepetition Note Obligations, the Prepetition Collateral, the DIP Obligations, the DIP Collateral, and the liens, claims, and rights granted to such parties under the Orders, each in accordance with the DIP Documents, the Prepetition Credit Documents or this Interim Order; (iii) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Agent or the DIP Lenders under this Interim Order, the Prepetition Credit Documents, or the DIP Documents, as applicable (other than in connection with an Approved Chapter 11 Plan); (iv) 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 DIP Liens, the DIP Superpriority Claims, adequate protection liens, and superpriority claims granted to the Prepetition Lenders or the Prepetition Noteholders, as applicable, unless all DIP Obligations, Prepetition Revolver Obligations, Prepetition Note Obligations, adequate protection obligations, and claims granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under this Interim Order, have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Required Lenders (as defined in the DIP Credit Agreement); or (v) to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the DIP Required Lenders (as defined in the DIP Credit Agreement) or are otherwise included in the Approved Budget.

28. *Loss or Damage to Collateral.* Nothing in this Interim Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, any DIP Lender or any of 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 business or in connection with their restructuring efforts (other than the Carve-Out). The DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of the DIP Collateral shall be borne by the Loan Parties.

29. *Interim Order Governs.* In the event of any inconsistency or conflict between the provisions of this Interim Order, on the one hand, and the DIP 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 and the DIP Documents, including, without limitation, the Approved Budget.

30. *Binding Effect; Successors and Assigns.* Subject to paragraph 26 above, 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, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Creditors' Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, and the Debtors and their respective successors and assigns; *provided* that the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall have no obligation to permit the use of the 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.

31. *Limitation of Liability.* In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any

rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Agent and the DIP Lenders shall not (i) be deemed to be in “control” of the operations of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and (iii) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

32. *No Waiver.* No delay or failure by the Prepetition Secured Parties, the DIP Agent or any DIP Lender in the exercise of its rights and remedies under the DIP Documents or this Interim Order, as applicable, shall constitute a waiver, in whole or in part, of any of such lender’s, noteholder’s, agent’s, or DIP Lender’s rights hereunder or otherwise.

33. *Proofs of Claim.* The Prepetition Agents shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself and the Prepetition Secured Parties for payment of the Prepetition Revolver Obligations or the Prepetition Note Obligations, as applicable, arising under the Prepetition Credit Documents, including, without limitation, any principal, premium, unpaid interest, fees, expenses, and other amounts under the Prepetition Credit Documents. The statements of claim in respect of the Prepetition Revolver Obligations and Prepetition Note Obligations 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. The stipulations of the Debtors set forth in paragraph 6 hereof shall be deemed to constitute a timely filed proof of claim for the Prepetition Revolver Agent in respect of all Prepetition Revolver Obligations and the Prepetition Note Agent in respect of all Prepetition

Note Obligations. In addition, the Prepetition Revolver Agent and the Prepetition Note Agent will not be required to file any request for allowance and/or payment of any administrative expenses, and this Interim Order shall be deemed to constitute a timely filed request for allowance and/or payment of any Prepetition Revolver Obligations or Prepetition Note Obligations constituting administrative expenses, as applicable and if any.

34. *Insurance.* To the extent that any Prepetition Agent is listed as loss payee under the Borrowers' or Guarantors' insurance policies, the DIP Agent is also deemed to be the loss payee 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.

35. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any Local Bankruptcy 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.

36. *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.

37. *Payments Held in Trust.* Except as expressly permitted in this Interim Order or the DIP Documents, in the event that any Prepetition Secured Party 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 prior to

indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the Commitments in accordance with the DIP Documents, such Prepetition Secured Party 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 Agent and the DIP Lenders and shall immediately turn over such proceeds to the DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Interim Order.

38. *Credit Bidding.* (a) The DIP Agent shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the DIP Collateral and (b) subject to paragraph 26 hereof, the Prepetition Lenders and the Prepetition Noteholders shall have the right to credit bid up to the full amount of the Prepetition Revolver Obligations and the Prepetition Note Obligations, respectively, in connection with any sale of any DIP Collateral pursuant to section 363 of the Bankruptcy Code, under a plan of reorganization or liquidation under section 1129 of the Bankruptcy Code, or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code, in each case, as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. For the avoidance of doubt, the DIP Lenders' exercise of their unqualified right to credit bid up to the full amount of the outstanding DIP Obligations (including any accrued interest) in any sale of the Collateral (or any part thereof) may include, with the consent of the applicable Prepetition Agent on behalf of the applicable Prepetition Secured Party, a credit bid of the Prepetition Obligations.

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

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

41. *Retention of Jurisdiction.* The Court shall retain jurisdiction to implement, interpret, and enforce the provisions of this Interim Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

42. *Final Hearing.* The Final Hearing is scheduled for _____, 2019 at _____
__m. (Eastern Time) before the Court.

43. *Objections.* Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon: (i) the U.S. Trustee 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian, Esq.); (ii) the Debtors, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston); (iii) proposed counsel for the Debtors, (a) Latham & Watkins LLP, (Attn: Keith A. Simon, Esq.), and (b) Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq., Paul N. Heath, Esq., Zachary I. Shapiro, Esq.); (iv) counsel for the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 (Attn: Matthew S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq.) and (b) Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801 (Attn: Laura Davis Jones, Esq.); and (v) if any statutory committee has been appointed in

the Chapter 11 Cases, counsel to such committee, in each case to allow actual receipt by the foregoing no later than [_____], **2019 at 4:00 p.m. (Eastern Time)**.

44. The Debtors shall within three (3) business days of its entry serve copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including, without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under sections 506(c) and 552(b) of the Bankruptcy Code) 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 Creditors' Committee after the same has been appointed, or such Creditors' Committee's counsel, if the same shall have been appointed.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

DIP Credit Agreement

Exhibit B

Approved Budget

EMES Cash Flow Forecast																					
DIP SUMMARY																					
Last Updated: 7/15/19																					
(5 in 000s)																					
Petition Date		ME				ME				ME				ME							
10 Days Ended		4 Days Ended																			
Act	Act	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst	Frcst
Week	Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18 Wk	Total
Ending (Friday)	5-Jul	15-Jul	19-Jul	26-Jul	2-Aug	9-Aug	16-Aug	23-Aug	30-Aug	6-Sep	13-Sep	20-Sep	27-Sep	4-Oct	11-Oct	18-Oct	25-Oct	1-Nov	8-Nov	15-Nov	
Cash Collections:																					
Cash Receipts:																					
Customer Collections	\$ 4,088	\$ 2,664	\$ 2,316	\$ 2,810	\$ 3,583	\$ 2,018	\$ 2,146	\$ 1,447	\$ 1,476	\$ 1,359	\$ 1,901	\$ 2,199	\$ 2,547	\$ 3,297	\$ 4,446	\$ 2,843	\$ 4,103	\$ 2,515	\$ 2,465	\$ 2,658	\$ 46,131
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Receipts	\$ 4,088	\$ 2,664	\$ 2,316	\$ 2,810	\$ 3,583	\$ 2,018	\$ 2,146	\$ 1,447	\$ 1,476	\$ 1,359	\$ 1,901	\$ 2,199	\$ 2,547	\$ 3,297	\$ 4,446	\$ 2,843	\$ 4,103	\$ 2,515	\$ 2,465	\$ 2,658	\$ 46,131
Cash Disbursements:																					
Operating Disbursements:																					
Payroll (including benefits)	\$ (701)	\$ -	\$ (750)	\$ -	\$ (976)	\$ -	\$ (701)	\$ -	\$ (976)	\$ -	\$ (701)	\$ -	\$ (701)	\$ (275)	\$ (701)	\$ -	\$ (701)	\$ (275)	\$ (701)	\$ (701)	\$ (8,159)
Insurance	(125)	-	-	(81)	-	-	-	-	(81)	-	-	-	-	(431)	-	-	-	(81)	-	-	(674)
Property Taxes	-	-	-	(596)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(596)
Ordinary Course Professionals	(44)	-	-	-	(175)	-	-	-	-	-	-	-	-	(175)	-	-	-	(175)	-	(88)	(788)
Rent	-	-	-	-	(46)	-	-	-	-	(46)	-	-	-	(46)	-	-	-	(46)	-	(23)	(207)
Utilities	(39)	(430)	(455)	-	-	(578)	-	-	(753)	-	-	-	-	-	(376)	(409)	-	-	(364)	(980)	(3,914)
Mining	(52)	(670)	-	-	(105)	(105)	(450)	(335)	(605)	(605)	(605)	(605)	(605)	(605)	(605)	(605)	(605)	(605)	(605)	(1,210)	(8,590)
Other Production Costs	(789)	(1,348)	(822)	(1,061)	(1,759)	(2,351)	(1,811)	(1,559)	(667)	(823)	(569)	(582)	(569)	(823)	(663)	(569)	(744)	(510)	(416)	(1,441)	(18,227)
Logistics	(456)	(1,336)	(1,496)	(871)	(766)	(1,608)	(828)	(722)	(823)	(689)	(696)	(486)	(486)	(717)	(403)	(509)	(403)	(819)	(486)	(1,297)	(14,105)
Capital Expenditures	-	-	-	(175)	(175)	(393)	(165)	(740)	(40)	(968)	(40)	(40)	(40)	(268)	(40)	(40)	(40)	(190)	(40)	(40)	(3,434)
Other	(128)	(173)	(215)	(50)	(350)	(50)	(250)	(50)	(325)	(84)	(250)	(50)	(75)	(354)	(75)	(225)	(75)	(354)	(75)	(998)	(3,914)
Total Operating Disbursements	\$ (2,334)	\$ (3,956)	\$ (3,737)	\$ (2,834)	\$ (4,361)	\$ (5,084)	\$ (4,205)	\$ (3,158)	\$ (4,314)	\$ (3,811)	\$ (2,873)	\$ (1,750)	\$ (2,729)	\$ (3,534)	\$ (2,769)	\$ (2,357)	\$ (2,568)	\$ (3,055)	\$ (2,687)	\$ (6,778)	\$ (62,607)
Cashflow from Operations	\$ 1,754	\$ (1,292)	\$ (1,421)	\$ (25)	\$ (779)	\$ (3,066)	\$ (2,059)	\$ (1,711)	\$ (2,838)	\$ (2,452)	\$ (972)	\$ 449	\$ (182)	\$ (237)	\$ 1,678	\$ 486	\$ 1,535	\$ (540)	\$ (222)	\$ (4,120)	\$ (16,476)
11 Interest / Fees	8.5%	\$ (514)	\$ -	\$ -	\$ (427)	\$ -	\$ -	\$ -	\$ (413)	\$ -	\$ -	\$ -	\$ -	\$ (323)	\$ -	\$ -	\$ -	\$ (238)	\$ -	\$ (86)	\$ (1,487)
DIP Interest	10.4%	-	-	-	(27)	-	-	-	(227)	-	-	-	-	(375)	-	-	-	(549)	-	(315)	(1,492)
Commitment Fee	1.0%	-	-	-	-	-	-	-	-	-	-	-	-	(47)	-	-	-	-	-	(14)	(61)
Restructuring Professionals	(524)	(1,226)	-	-	(60)	(30)	(15)	-	(2,756)	-	(30)	-	(2,729)	-	(15)	-	(3,778)	-	-	(6,401)	(15,814)
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(500)	-	-	(450)	(950)
Total Financing and Restructuring Costs	\$ (1,038)	\$ (1,226)	\$ -	\$ -	\$ (514)	\$ (30)	\$ (15)	\$ -	\$ (3,396)	\$ -	\$ (30)	\$ -	\$ (2,729)	\$ (746)	\$ (15)	\$ -	\$ (3,778)	\$ (500)	\$ -	\$ (7,266)	\$ (19,805)
Total Net Cash Flow (Deficit)	\$ 716	\$ (2,518)	\$ (1,421)	\$ (25)	\$ (1,292)	\$ (3,096)	\$ (2,074)	\$ (1,711)	\$ (6,234)	\$ (2,452)	\$ (1,002)	\$ 449	\$ (2,911)	\$ (983)	\$ 1,663	\$ 486	\$ (2,244)	\$ (1,827)	\$ (222)	\$ (11,386)	\$ (36,281)
Cash Beginning Balance	\$ 3,085	\$ 3,801	\$ 1,282	\$ 7,361	\$ 7,336	\$ 6,044	\$ 2,948	\$ 12,873	\$ 11,162	\$ 4,928	\$ 2,476	\$ 1,474	\$ 1,924	\$ 9,013	\$ 8,030	\$ 9,693	\$ 10,179	\$ 7,936	\$ 6,109	\$ 5,887	\$ 1,282
Net Cash Flow	716	(2,518)	(1,421)	(25)	(1,292)	(3,096)	(2,074)	(1,711)	(6,234)	(2,452)	(1,002)	449	(2,911)	(983)	1,663	486	(2,244)	(1,827)	(222)	(11,386)	(36,281)
Cash Before Revolver Draw	3,801	1,282	(139)	7,336	6,044	2,948	873	11,162	4,928	2,476	1,474	1,924	(987)	8,030	9,693	10,179	7,936	6,109	5,887	(5,499)	(34,999)
Advance from Revolver	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Advance from DIP	-	-	7,500	-	-	-	12,000	-	-	-	-	-	10,000	-	-	-	-	-	-	5,500	35,000
Paydown Revolver	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Cash Balance	\$ 2,000	\$ 3,801	\$ 1,282	\$ 7,361	\$ 7,336	\$ 6,044	\$ 2,948	\$ 12,873	\$ 11,162	\$ 4,928	\$ 2,476	\$ 1,474	\$ 1,924	\$ 9,013	\$ 8,030	\$ 9,693	\$ 10,179	\$ 7,936	\$ 6,109	\$ 5,887	\$ 1
Revolver Beginning Balance	\$ 62,181	\$ 62,181	\$ 63,209	\$ 62,612	\$ 59,803	\$ 56,726	\$ 54,708	\$ 52,562	\$ 51,115	\$ 49,639	\$ 48,785	\$ 46,884	\$ 44,685	\$ 42,138	\$ 39,347	\$ 34,900	\$ 32,057	\$ 27,954	\$ 25,439	\$ 22,974	\$ 63,209
Advance (LCs)	-	1,028	-	1,720	-	506	-	-	-	506	-	-	-	506	-	-	-	-	-	-	3,238
Deemed DIP Draws	-	-	(2,316)	(2,810)	(3,583)	(2,018)	(2,146)	(1,447)	(1,476)	(1,359)	(1,901)	(2,199)	(2,547)	(3,297)	(4,446)	(2,843)	(4,103)	(2,515)	(2,465)	(2,658)	(46,131)
Refinance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Balance	\$ 62,181	\$ 63,209	\$ 62,612	\$ 59,803	\$ 56,726	\$ 54,708	\$ 52,562	\$ 51,115	\$ 49,639	\$ 48,785	\$ 46,884	\$ 44,685	\$ 42,138	\$ 39,347	\$ 34,900	\$ 32,057	\$ 27,954	\$ 25,439	\$ 22,974	\$ 20,316	\$ 20,316
DIP Beginning Balance	\$ -	\$ -	\$ -	\$ 10,866	\$ 13,676	\$ 17,259	\$ 19,277	\$ 33,422	\$ 34,869	\$ 36,346	\$ 37,705	\$ 39,606	\$ 41,805	\$ 54,353	\$ 57,650	\$ 62,096	\$ 64,940	\$ 69,042	\$ 71,557	\$ 74,023	\$ -
Refinance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
OID	-	1,050	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,050
Cash Advances	-	7,500	-	-	-	-	12,000	-	-	-	-	-	10,000	-	-	-	-	-	-	-	35,000
Deemed Draws	-	-	2,316	2,810	3,583	2,018	2,146	1,447	1,476	1,359	1,901	2,199	2,547	3,297	4,446	2,843	4,103	2,515	2,465	2,658	46,131
Ending Balance	\$ -	\$ -	\$ 10,866	\$ 13,676	\$ 17,259	\$ 19,277	\$ 33,422	\$ 34,869	\$ 36,346	\$ 37,705	\$ 39,606	\$ 41,805	\$ 54,353	\$ 57,650	\$ 62,096	\$ 64,940	\$ 69,042	\$ 71,557	\$ 74,023	\$ 82,181	\$ 82,181
Availability	\$ -	\$ -	\$ 27,500	\$ 27,500	\$ 27,500	\$ 27,500	\$ 15,500	\$ 15,500	\$ 15,500	\$ 15,500	\$ 15,500	\$ 15,500	\$ 5,500	\$ 5,500	\$ 5,500	\$ 5,500	\$ 5,500	\$ 5,500	\$ 5,500	\$ 5,500	\$ -
Total Liquidity	\$ -	\$ -	\$ 34,861	\$ 34,836	\$ 33,544	\$ 30,448	\$ 28,373	\$ 26,662	\$ 20,428	\$ 17,976	\$ 16,974	\$ 17,424	\$ 14,513	\$ 13,530	\$ 15,193	\$ 15,679	\$ 13,436	\$ 11,609	\$ 11,387	\$ 1	\$ -

Exhibit B

Fee Letters



40 West 57th Street, 33rd Floor
New York, NY 10019

July [●], 2019

CONFIDENTIAL

Emerge Energy Services LP
6000 Western Place, Suite 465
Ft. Worth, Texas 76107

Fee Letter Agreement

Dear Ladies and Gentlemen:

Reference is made to that certain Senior Secured Priming and Superpriority Debtor-in-Possession Credit and Security Agreement, dated as of the date hereof (the "DIP Credit Agreement"), among Emerge Energy Services LP, a Delaware limited partnership ("Parent Guarantor"), Emerge Energy Services Operating LLC, a Delaware limited liability company ("Emerge"), Superior Silica Sands LLC, a Texas limited liability company ("SSS"), and collectively with Emerge, the "Borrowers" and each a "Borrower", Emerge Energy Services Finance Corporation, a Delaware corporation, the financial institutions from time to time party thereto (collectively, the "Lenders" and each individually a "Lender"), and HPS Investment Partners, LLC, as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities, the "Agent"). The Parent Guarantor and the Borrowers are entering into this letter agreement (this "Letter Agreement") in connection with the DIP Credit Agreement. Capitalized terms used but not defined in this Letter Agreement have the meanings assigned therein.

In connection with, and in consideration of the agreements contained in, the DIP Credit Agreement, and the Borrowers hereby agree with Agent as follows:

1. **CLOSING FEE**. The Borrowers will, on a joint and several basis, pay (or cause to be paid) to each Lender, a closing fee (the "Closing Fee") in an amount equal to 3.00% of the aggregate Commitment Amount of such Lender as of the Closing Date, which Closing Fee will be fully earned and due and payable on the Closing Date.

2. **DIP FEE**. If the Borrowers, Parent Guarantor or any of their respective Subsidiaries enters into a debtor-in possession financing arrangement in lieu of the DIP Facility or as a refinancing or replacement of, in whole or in part, the DIP Facility (an "Alternative DIP") and a financial institution other than the Lenders provides such Alternative DIP to the Borrowers, Parent Guarantor or any of their respective Subsidiaries, then the Borrowers agree, on a joint and several basis, to pay (or cause to be paid) to the Agent, for the ratable benefit of the Lenders, a prepayment premium (the "DIP Fee") in an amount equal to 5.00% of the aggregate outstanding principal amount of the Advances (including any Roll-Up Loans) and unused Commitments of each Lender, immediately upon consummation of the Alternative DIP.

All fees payable hereunder shall be payable in U.S. dollars in immediately available funds, free and clear of, and without deduction for, any and all present or future applicable taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto (with appropriate gross-up for withholding taxes). Once paid, all fees will be nonrefundable under any and all circumstances and will not be subject to any counterclaim, setoff or other impairment or right of rescission or turnover. At the sole discretion of the Agent, all or any portion of any fees paid to the Agent may be allocated to any other affiliate thereof or paid to any other Person. All fees payable hereunder shall be in addition to any fees, expenses or other amounts payable by the Borrowers to the Agent and the Lenders under the terms of the DIP Credit Agreement.

CONFIDENTIAL.

This Letter Agreement shall be governed by and construed in accordance with the laws of the State of New York applied to contracts to be performed wholly within the State of New York and any applicable laws of the United States of America, including the Bankruptcy Code. Each Credit Party hereby consents and agrees that the Bankruptcy Court shall have exclusive jurisdiction to hear and determine any claims or disputes between the Credit Parties, Agent and Lenders pertaining to this Letter Agreement or to any matter arising out of or relating to this Letter Agreement; provided, that the Agent, Lenders and the Credit Parties acknowledge that any appeals from the Bankruptcy Court may have to be heard by a court other than the Bankruptcy Court. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS LETTER AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH.

This Letter Agreement is the Fee Letter referred to in the DIP Credit Agreement. The parties hereto hereby agree that the Borrowers' obligations under this Fee Letter shall constitute Obligations. The parties to this Letter Agreement agree that this Letter Agreement is an Other Document for the purposes of the DIP Credit Agreement. The terms of this Fee Letter may be subject to approval of the Bankruptcy Court.

This Letter Agreement may not be amended or waived except by an instrument in writing signed by the Lenders and the Agent. This Letter Agreement may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Letter Agreement by facsimile transmission or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Letter Agreement. There are no third party beneficiaries to this Letter Agreement.

[Signature pages follow.]

Very truly yours,

HPS INVESTMENT PARTNERS, LLC

By: _____
Name:
Title:

[SIGNATURE PAGE TO FEE LETTER AGREEMENT]

EMERGE ENERGY SERVICES OPERATING LLC

By: _____
Name:
Title:

EMERGE ENERGY SERVICES OPERATING LLC

By: _____
Name:
Title:

SUPERIOR SILICA SANDS LLC

By: _____
Name:
Title:

[SIGNATURE PAGE TO FEE LETTER AGREEMENT]

File a First Day Motion:[19-11563-KBO Emerge Energy Services LP](#)

Type: bk

Chapter: 11 v

Office: 1 (Delaware)

Assets: y

Judge: KBO

Case Flag: PlnDue, DsclsDue

U.S. Bankruptcy Court**District of Delaware**

Notice of Electronic Filing

The following transaction was received from John Henry Knight entered on 7/16/2019 at 10:56 AM EDT and filed on 7/16/2019

Case Name: Emerge Energy Services LP**Case Number:** [19-11563-KBO](#)**Document Number:** [20](#)**Docket Text:**

Motion to Approve Debtor In Possession Financing Filed By Emerge Energy Services LP (Knight, John)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**W:\BJW\Emerge - DIP Motion - FILING VERSION.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=7/16/2019] [FileNumber=15878920-0]
] [0ad5403f5084ae27b7481112b9fc265072b3209ac109cfe810519cf410eb80a8d30
2ac5b335fce2402ba4263bf3ed080f7739e710291df49b12c6f521c8c62b6]]

19-11563-KBO Notice will be electronically mailed to:

Travis James Cuomo on behalf of Debtor Emerge Energy Services LP
cuomo@rlf.com, rbgroup@rlf.com;ann-jerominski-2390@ecf.pacerpro.com

Brett Michael Haywood on behalf of Debtor Emerge Energy Services LP
haywood@rlf.com, rbgroup@rlf.com,ann-jerominski-2390@ecf.pacerpro.com

Paul Noble Heath on behalf of Debtor Emerge Energy Services LP
heath@rlf.com, RBGroup@rlf.com;ann-jerominski-2390@ecf.pacerpro.com

John Henry Knight on behalf of Debtor Emerge Energy Services LP
knight@rlf.com, RBGroup@RLF.com;ann-jerominski-2390@ecf.pacerpro.com

Juliet M. Sarkessian on behalf of U.S. Trustee U.S. Trustee
juliet.m.sarkessian@usdoj.gov

Zachary I Shapiro on behalf of Debtor Emerge Energy Services LP

EXHIBIT B

Interim Order

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

-----	x	
<i>In re:</i>	:	
	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, et al.	:	Case No. 19– 11563 (KBO)
	:	
Debtors.¹	:	Jointly Administered
	:	
-----	x	Re: Docket No. 20

**INTERIM ORDER (I) AUTHORIZING THE
DEBTORS TO (A) OBTAIN POSTPETITION FINANCING
AND (B) USE CASH COLLATERAL, (II) GRANTING CERTAIN
PROTECTIONS TO PREPETITION SECURED PARTIES, (III) SCHEDULING
A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”) of Emerge Energy Services Operating, LLC and Superior Silica Sands LLC (together, the “**Borrowers**”) and their affiliated debtors, each as a debtor and debtor-in-possession (collectively, the “**Debtors**”) in the above captioned cases (the “**Chapter 11 Cases**”), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, *et seq.* (as amended, the “**Bankruptcy Code**”), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rules 2002-1(b) and 4001-2 of the Bankruptcy Local Rules for the District of Delaware (the “**Local Bankruptcy Rules**”), seeking, among other things:

- A. authority for the Borrowers to obtain senior secured debtor-in-possession financing (the “**DIP Financing**”), and for Emerge Energy Services LP, the direct parent of the Borrowers and each direct and indirect subsidiary of the Borrowers that is a Debtor (each a “**Guarantor**” and, collectively in their capacities as such,

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

the “**Guarantors**”; the Guarantors collectively with the Borrowers, the “**Loan Parties**”² to unconditionally guaranty, on a joint and several basis, the Borrowers’ obligations in connection with the DIP Financing, consisting of a senior secured revolving credit facility (the “**DIP Facility**”), in an aggregate principal amount of up to \$35,000,000, plus any roll-up loans in an aggregate principal amount equal to the proceeds of Prepetition Collateral (as defined below) received on and after the closing date of the DIP Credit Agreement (collectively, the “**DIP Commitments**”), all on the terms and conditions set forth in this interim order (the “**Interim Order**”) and the DIP Documents (as defined below);

- B. authority for the Loan Parties to (A) execute and enter into the *Superpriority Senior Secured Debtor-in-Possession Credit Agreement*, among the Borrowers, the Guarantors, the lenders from time to time thereto (collectively, the “**DIP Lenders**”), and HPS Investment Partners, LLC, as administrative agent (the “**DIP Agent**” and, together with the DIP Lenders, the “**DIP Secured Parties**”), substantially in the form attached hereto as **Exhibit A** (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the “**DIP Credit Agreement**” and, together with any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other Credit Documents (as defined in the DIP Credit Agreement) and documents related thereto, the DIP Credit Agreement, the “**DIP Documents**”) and (B) perform all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Facility and the DIP Documents;
- C. authority to grant adequate protection to (i) HPS Investment Partners, LLC, in its capacity as administrative agent and collateral agent (the “**Prepetition Revolver Agent**”), and the lenders as of March 15, 2019 and from time to time thereafter (the “**Prepetition Lenders**”)³ party to that certain *Second Amended and Restated Revolving Credit and Security Agreement*, dated January 5, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, including most recently pursuant to that certain *Forbearance Agreement and Third Amendment to Second Amended and Restated Revolving Credit and Security Agreement*, dated as of February 28, 2019 (the “**Third Forbearance Agreement**”)) (together with any ancillary documents, security agreements, guarantees and pledge agreements in connection therewith, the “**Prepetition Revolving Credit Agreement**”), and (ii) HPS Investment Partners, LLC, in its capacity as administrative agent and note agent (the “**Prepetition Note Agent**” and, together with the Prepetition Revolver Agent, the “**Prepetition Agents**”), and the noteholders from time to time (collectively, the “**Prepetition**

² For the avoidance of doubt, the Loan Parties do not include Emerge Energy Services GP LLC.

³ For the avoidance of doubt, reference in this Interim Order to “Prepetition Lenders” does not include PNC Bank National Association and the lenders party to the Prepetition Revolving Credit Agreement (as hereinafter defined) prior to March 15, 2019.

Noteholders” and, together with the Prepetition Lenders, the “**Prepetition Secured Parties**”) party to that certain *Second Lien Note Purchase Agreement*, dated as of January 5, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, including most recently pursuant to that certain *Forbearance Agreement and Second Amendment to Second Lien Note Purchase Agreement*, dated as of January 31, 2019 (the “**Second Forbearance Agreement**”)) (together with any ancillary documents, security agreements, guarantees, pledge agreements and notes issued in connection therewith, the “**Prepetition Note Purchase Agreement**” and, together with the Prepetition Revolving Credit Agreement, the “**Prepetition Credit Documents**”);

- D. authority for the Borrowers to use net cash proceeds from the sale of any Prepetition Collateral (as defined below) or the proceeds from receivables to effect the Roll-Up (as defined below) and *thereafter* to pay accrued interest, principal and other amounts outstanding under the DIP Credit Agreement.
- E. subject to the restrictions set forth in the DIP Documents and this Interim Order, authority for the Loan Parties to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which any of the Prepetition Secured Parties have an interest and the granting of adequate protection to the Prepetition Agents on behalf of the Prepetition Secured Parties on the terms set forth in this Interim Order, with respect to, *inter alia*, such use of Cash Collateral and the other Prepetition Collateral;
- F. authority for the Debtors’ use of the proceeds of the DIP Facility pursuant to the DIP Credit Agreement and the other DIP Documents, including the Approved Budget (as defined below) (subject to permitted variances);
- G. subject to the payment in full in cash of the Carve-Out (as defined below), the granting to the DIP Secured Parties of allowed superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code, as further described herein, payable from and having recourse to all prepetition and postpetition property of the Loan Parties’ estates and all proceeds thereof (including, subject only to and effective upon entry of the Final Order (as defined below), any Avoidance Proceeds (as defined below));
- H. authority for the granting to the DIP Agent (for the benefit of the DIP Secured Parties) of liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on all prepetition and postpetition property of the Loan Parties’ estates and all proceeds thereof (other than the Avoidance Actions (as defined below), but including, subject only to and effective upon entry of the Final Order, any Avoidance Proceeds), in each case subject to the payment in full in cash of the Carve-Out;
- I. authority for the Loan Parties to pay, on a final and irrevocable basis, the principal, interest, fees, expenses and other amounts payable under the DIP

Documents as such become earned, due and payable, including, but not limited to, upfront fees, backstop fees, closing date fees, exit fees, prepayment fees, agency fees, audit fees, appraisal fees, valuation fees, administrative agent's fees, the reasonable fees and disbursements of the DIP Agent's and DIP Lenders' attorneys, all to the extent provided in, and in accordance with, the DIP Documents;

- J. approval of certain stipulations by the Debtors with respect to the Prepetition Credit Documents and the liens and security interests arising therefrom;
- K. subject only to and effective upon entry of the Final Order, as applicable, the waiver of (i) the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code (subject to the payment in full in cash of the Carve-Out), and (ii) any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;
- L. modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent set forth herein and necessary to implement and effectuate the terms and provisions of this Interim Order and the DIP Documents; and
- M. the scheduling of a final hearing (the "**Final Hearing**") to be held within 30 days of the entry of the Interim Order to consider final approval, as applicable, of the Motion and the entry of a final order (the "**Final Order**") authorizing and approving the transactions described in the Motion and the DIP Documents.

The Court having reviewed the Motion, the exhibits attached thereto, the DIP Documents, the *Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, the Declaration of Adam L. Dunayer, Managing Director of Houlihan Lokey, in support of the Motion, and the Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in support of the Motion, and the evidence submitted and arguments made at the interim hearing held on July 17, 2019 (the "**Interim Hearing**"); and due and sufficient notice of the Motion and the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the opportunity for objection having been given under the circumstances; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and the 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 in the best interests of the Debtors and their estates and is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and is essential for the continued operation of the Debtors' business and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor;

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

1. *Disposition.* The relief requested in the Motion is granted on an interim basis as set forth herein. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry. The rights of all parties in interest to object to entry of a Final Order are hereby preserved.

2. *Petition Date.* On July 15, 2019 (the "**Petition Date**"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Court**"). Each Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. *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(b) and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the

District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. *Committee Formation.* As of the date hereof, the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed an official committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”).

5. *Notice.* Notice of the Motion and the Interim Hearing has been provided in accordance with Local Bankruptcy Rule 9013-1(m)(iii), and no other or further notice of the Motion or the entry of this Interim Order shall be required, except as set forth herein. 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.

6. *Debtors’ Stipulations.* Without prejudice to the rights of any party in interest and subject to the limitations thereon contained in paragraphs 26 and 27 below, the Debtors admit, stipulate and agree that:

(a) As of the Petition Date, the Loan Parties (other than Emerge Energy Services Finance Corporation) were indebted and jointly and severally liable to the Prepetition Secured Parties, without objection, defense, counterclaim or offset of any kind, as follows:

(i) *Prepetition Revolver Obligations.* Pursuant to the Prepetition Revolving Credit Agreement, the Prepetition Lenders provided to the Borrowers a facility for loans and advances and the cash collateralization of all outstanding letters of credit or letters of credit guaranties under the Prepetition Revolving Credit Agreement, in an aggregate principal amount of not less than \$75,000,000. As of the Petition Date, the Prepetition Lenders are owed an aggregate principal amount of not less than \$66,726,984.56, plus unliquidated amounts including interest thereon and fees, expenses, charges and other obligations incurred in connection with the Prepetition Revolving Credit Agreement (collectively, such obligations, the “**Prepetition Revolver Obligations**”), and the Borrowers and the Guarantors (other than Emerge Energy Services Finance

Corporation) are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Prepetition Revolver Obligations. The Commitments (as defined in the Prepetition Revolving Credit Agreement) under the Prepetition Revolving Credit Agreement are terminated in full as of the Petition Date.

(ii) *Prepetition Revolver Liens.* To secure the Prepetition Revolver Obligations, the Borrowers and the Guarantors (other than Emerge Energy Services Finance Corporation) entered into various security and collateral documents pursuant to and in connection with the Prepetition Revolving Credit Agreement, pursuant to which the Prepetition Revolver Agent, for the benefit of itself and the Prepetition Lenders, was granted valid, binding, perfected, enforceable, first-priority liens and security interests in the Collateral (as defined in the Prepetition Revolving Credit Agreement and the Prepetition Note Purchase Agreement, as applicable) (such Collateral, the “**Prepetition Collateral**” and such liens and security interests, the “**Prepetition Revolver Liens**”). The Prepetition Revolver Liens granted in connection with the Prepetition Revolving Credit Agreement, are: (x) valid, binding, perfected, enforceable, first-priority liens, and security interests in the Prepetition Collateral; (y) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law; and (z) as of the Petition Date are subject and subordinate only to certain valid, perfected, and unavoidable liens permitted under the Prepetition Revolving Credit Agreement to the extent such liens are senior to or *pari passu* with the liens of the Prepetition Revolver Agent and the Prepetition Lenders on the Prepetition Collateral.

(iii) *Prepetition Note Obligations.* Pursuant to the Prepetition Note Purchase Agreement, the Borrowers issued notes to the Prepetition Noteholders and the Prepetition Noteholders made certain other financial accommodations to the Borrowers in an aggregate principal amount of not less than \$215,000,000. As of the Petition Date, the Prepetition Noteholders are owed the aggregate principal amount of not less than \$215,891,326.70, plus unliquidated amounts including interest thereon and fees, expenses, charges, Make Whole Amount and/or Applicable Redemption Premium (each as defined in the Prepetition Note Purchase Agreement), and other obligations incurred in connection with the Prepetition Note Purchase Agreement (collectively, such obligations, the “**Prepetition Note Obligations**” and, together with the Prepetition Revolver Obligations, the “**Prepetition Debt**”), and the Borrowers and the Guarantors (other than Emerge Energy Services Finance Corporation) are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Prepetition Note Obligations. The Commitments (as defined in the Prepetition Note Purchase Agreement) under the Prepetition Note Purchase Agreement are terminated in full as of the Petition Date.

(iv) *Prepetition Note Liens.* To secure the Prepetition Note Obligations, the Borrowers and the Guarantors (other than Emerge Energy Services Finance Corporation) entered into various security and collateral documents pursuant to and in connection with the Prepetition Note Purchase Agreement, pursuant to which the Prepetition Note Agent, for the benefit of itself and the Prepetition Noteholders, was granted valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition Collateral (the “**Prepetition Note Liens**” and, together with the Prepetition Revolver Liens, the “**Prepetition Liens**”), subject to the Prepetition Revolver Liens as provided in the Intercreditor Agreement (as defined below). The Prepetition Note Liens granted in connection with the Prepetition Note Purchase Agreement, are: (x) valid, binding, perfected, enforceable, first-priority liens, and security interests in the Prepetition Collateral; (y) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense or claim under the Bankruptcy Code or applicable non-bankruptcy law; and (z) as of the Petition Date are subject and subordinate only to certain valid, perfected, and unavoidable liens permitted under the Prepetition Note Purchase Agreement to the extent such liens are senior to or *pari passu* with the liens of the Prepetition Note Agent and the Prepetition Noteholders on the Prepetition Collateral.

(b) By virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Credit Documents, none of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtor’s operations are conducted or are control persons or insiders of the Debtors.

(c) The Prepetition Debt constitutes the legal, valid, binding, non-avoidable and enforceable obligations of the Loan Parties (other than Emerge Energy Services Finance Corporation), and the Prepetition Liens are valid, binding, properly perfected, non-avoidable, and enforceable liens on and security interests in the Prepetition Collateral.

(d) All proceeds of the Prepetition Collateral and all cash and cash equivalent proceeds maintained in deposit or securities accounts subject to prepetition control agreements or otherwise within the control of the Prepetition Secured Parties, are “cash collateral” of the

Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the “**Cash Collateral**”).

(e) The Prepetition Revolver Agent and the Prepetition Note Agent are party to that certain *First Lien/Second Lien Intercreditor Agreement*, dated as of January 5, 2018, and acknowledged by Emerge Energy Services LP and the Borrowers (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the “**Intercreditor Agreement**”), to govern the respective rights, interests, obligations and priority of the Prepetition Secured Parties with respect to the Prepetition Collateral. Pursuant to the Intercreditor Agreement (a) the Prepetition Revolver Liens in respect of the Prepetition Collateral securing the Prepetition Revolver Obligations are senior to any Prepetition Note Lien in respect of the Prepetition Collateral securing the Prepetition Note Obligations, and (b) the Prepetition Note Liens in respect of the Prepetition Collateral securing the Prepetition Note Obligations are junior and subordinate in all respects to the Prepetition Revolver Liens in respect of the Prepetition Collateral securing the Prepetition Revolver Obligations.

(f) The liens granted by the Loan Parties to the DIP Agent on behalf of the DIP Lenders shall be valid, enforceable and non-avoidable liens against the Loan Parties.

(g) Events of default have occurred and are continuing under the terms of the Prepetition Revolver Credit Agreement and the Prepetition Note Purchase Agreement, as set forth in, but not limited to, those events of default described in the Third Forbearance and the Second Forbearance Agreement, respectively. The Prepetition Secured Parties expressly reserve all of their respective rights, powers, privileges and remedies under the Prepetition Credit Documents and/or applicable law.

7. *Release.* Subject to and effective as of the date of entry of the Final Order, but subject in all respects to paragraph 26 hereof, including the expiration of the Challenge Period, the Debtors and the Loan Parties hereby absolutely, unconditionally, and irrevocably release and forever discharge and acquit the Prepetition Secured Parties and their respective Representatives (as defined below) (collectively, the “**Released Parties**”) from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all “claims” (as defined in the Bankruptcy Code), counterclaims, demands, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the Petition Date (including, without limitation, causes of action in the nature of “lender liability”), setoff, recoupment or other offset rights against any and all of the Released Parties, of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the Prepetition Credit Documents, including, without limitation, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the deal reflected thereby, the Prepetition Collateral or the debtor-creditor relationship among any of the applicable Prepetition Secured Parties, on the one hand, and the Debtors, on the other hand, from the beginning of time until immediately preceding the entry of this Interim Order, 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 against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Interim Order (collectively, the “**Released Claims**”), whether such Released Claims are matured or unmatured.

8. *Findings Regarding the DIP Financing and Cash Collateral.*

(a) Good and sufficient cause has been shown for the entry of this Interim Order.

(b) The Loan Parties have an immediate need to obtain the DIP Financing and to continue to use the Prepetition Collateral (including Cash Collateral). The Loan Parties' 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, including paragraph 27 herein: (i) to consummate the transactions contemplated by the DIP Documents and pay related fees, costs and expenses, (ii) for working capital and other general corporate purposes of the Borrowers and the Guarantors during the pendency of the Chapter 11 Cases; (iii) make adequate protection payments as described in paragraph 18(d); and (iv) to pay certain fees and expenses of professionals retained by the Debtors, subject to the Carve-Out and for certain other prepetition and pre-filing expenses that are approved by the applicable Bankruptcy Court and consented to by the DIP Agent, in each case of the foregoing clauses (i), (ii), (iii) and (iv) in accordance with the Approved Budget (except as expressly provided in Paragraph 11 below with respect to Professional Fees and Statutory Fees) or otherwise with the prior written consent of the DIP Agent in its sole discretion. Except with the prior written consent of the DIP Agent in its sole discretion and pursuant to further order of the Court, the Debtors shall not be permitted to use the proceeds of the DIP Facility and the proceeds of Collateral in contravention of the provisions of the orders entered in the Chapter 11 Cases, including any restrictions or limitations on the use of proceeds contained therein. The Loan Parties' 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 going concern values of the Loan Parties. The Loan Parties' 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 access by the Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Facility and other financial accommodations provided under the DIP Documents are necessary and vital to avoid an immediate liquidation and for the preservation and maintenance of the going concern values of the Loan Parties and to a successful restructuring of the Loan Parties.

(c) The Loan Parties 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 unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Loan Parties are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code without the Loan Parties granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out, the DIP Liens and the DIP Superpriority Claims (as defined below) on the terms and conditions set forth herein, and granting the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this Interim Order and in the DIP Documents.

(d) Based on the Motion, the declarations filed in support of the Motion, 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 Loan Parties may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order and the DIP Documents, are in each case fair and reasonable, reflect the Loan Parties' exercise of prudent business judgment, constitute reasonably equivalent value and fair consideration, and represent the best financing available. The adequate protection provided in

this Interim Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(e) To the extent such consent is required, the Prepetition Secured Parties have consented (or, where applicable, are deemed to have consented pursuant to the Intercreditor Agreement) to the use of Cash Collateral and the other Prepetition Collateral, the priming of the Prepetition Liens pursuant to section 364(d)(1) of the Bankruptcy Code, and the Debtors' entry into the DIP Documents in accordance with and subject to the terms of this Interim Order and the DIP Documents.

(f) 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 Loan Parties, the Prepetition Secured Parties, the DIP Agent, and the DIP Lenders, and their respective advisors, and all of the Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation: (i) all loans made to and guarantees issued by the Loan Parties pursuant to the DIP Documents (collectively, the "**DIP Loans**") and (ii) any "**Obligations**" (as defined in the DIP Credit Agreement) of the Loan Parties owing to the DIP Agent, any DIP Lender or any of their respective affiliates, in accordance with the terms of the DIP Documents, including any obligations, to the extent provided for in the DIP Documents, to indemnify the DIP Agent or the DIP Lenders and to pay any fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the DIP Documents, subject to the procedures set forth in paragraph 18(c) below), 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 (i) and (ii) collectively, the “**DIP Obligations**”), shall be deemed to have been extended by the DIP Secured Parties 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 Agent and the DIP Lenders (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. The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Loan Parties’ continued use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors’ estates and the continued operation of their business (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 Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 363(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.

(g) The Prepetition Secured Parties are entitled to the adequate protection 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, the declarations filed in support of the Motion, and the record presented to the Court at the Interim Hearing, 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 Loan Parties’ prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral; *provided* that nothing in this Interim Order or the other DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties 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, (y) 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 (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties.

(h) Any net cash proceeds received by the Loan Parties from the sale of any Prepetition Collateral or the proceeds from receivables shall be (i) retained by the Loan Parties *and* (ii) deemed to repay, on a dollar-for-dollar basis, and discharge, until paid in full, the aggregate outstanding principal indebtedness under the Prepetition Revolving Credit Agreement, including the amount currently cash collateralizing all outstanding letters of credit or letters of credit guaranties thereunder and any interest accrued through the date of discharge *and* (iii) be deemed borrowed by the Borrowers and deemed funded by each DIP Lender in the exact same principal amount equal to the aggregate outstanding principal amount of the Prepetition Revolver Obligations held by such Lender on the date immediately prior to the deemed funding of such Roll-Up Loan, on a dollar-for-dollar basis, under the DIP Facility in accordance with the terms of the DIP Documents and this Interim Order (the “**Roll-Up Loans**”) (and clauses (i), (ii) and (iii) together, but without duplication, the “**Roll-Up**”); *provided, however*, that the Roll-Up Loans are subject to the Challenge (as defined below) set forth in paragraph 26 of this Order. It is an exercise of the Loan Parties’ prudent business judgment to effect and consummate the Roll-Up; *provided further that*, the Roll-Up Loans shall not become Obligations of, and no liens in respect thereof shall attach to the assets of, Emerge Services Finance Corporation until and effective upon entry of a Final Order.

(i) The Debtors have prepared and delivered to the DIP Agent and the DIP Lenders an initial budget (the “**Initial DIP Budget**”), a copy of which is attached hereto as **Exhibit B**. The Initial DIP Budget reflects the Debtors’ anticipated net cash flow and anticipated disbursements for each calendar week during the period from the Petition Date through and including the end of the eighteenth week following the Petition Date. The Initial DIP Budget may be modified, amended and updated from time to time in accordance with the DIP Credit Agreement, and once approved by, in form and substance reasonably satisfactory to the DIP Required Lenders,⁴ shall supplement and replace the Initial DIP Budget (the Initial DIP Budget and each subsequent approved budget, shall constitute without duplication, an “**Approved Budget**”); *provided, that* any material modifications, amendments, updates and supplements to the Approved Budget shall be filed by the Debtors with the Court no later than the date such modification, amendment, update or supplement becomes effective, and simultaneously served on any official committee appointed in these cases and on the U.S. Trustee. The Debtors believe that the Initial DIP Budget is reasonable under the facts and circumstances. The DIP Agent and 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.

(j) The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Bankruptcy Rule 4001-2(b). Absent granting the relief set forth in this Interim Order, the Loan Parties’ estates will be immediately and irreparably harmed. Consummation of the DIP Financing and the use of

⁴ “**DIP Required Lenders**” means “Required Lenders” as defined in the DIP Credit Agreement.

Prepetition Collateral, including Cash Collateral, in accordance with this Interim Order and the DIP Documents are therefore in the best interests of the Loan Parties' estates.

9. *Authorization of the DIP Financing and the DIP Documents.*

(a) The Loan Parties are hereby authorized to execute, enter into and perform all obligations under the DIP Documents. The Borrowers are hereby authorized to borrow money (or deem to borrow, in the case of Roll-Up Loans) pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guaranty the Borrower's obligations with respect to such borrowings, on an interim basis in the aggregate principal or face amount not to exceed \$7,500,000, and on a final basis an aggregate principal or face amount not to exceed \$35,000,000 plus any Roll-Up Loans in an aggregate principal amount equal to the proceeds of Prepetition Collateral and receivables received on and following the effectiveness of the DIP Credit Agreement, which shall be used for all purposes permitted under the DIP Documents (and subject to the terms and conditions set forth herein and therein).

(b) In furtherance of the foregoing and without further approval of this Court, each Loan Party is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees that may be reasonably required or necessary for the Loan Parties' performance of their obligations under or related to the DIP Financing, including, without limitation:

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

(ii) 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 Loan Parties, the DIP Agent, and the DIP Requisite Lenders may agree, it being understood that no further approval of the Court shall be required for authorizations, non-material amendments, waivers, consents or other non-material modifications to and under the DIP Documents, provided however that all material amendments and modifications to and under the DIP Documents, including but not limited to those that shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder, shall be subject to further Court approval; and, *provided further* that copies of all amendments and modifications to and under the DIP Documents, regardless of materiality, shall be provided to the U.S. Trustee and the Creditors' Committee;

(iii) the incurrence of, and the non-refundable payment to the DIP Agent or the DIP Lenders, as the case may be, of all fees including, without limitation, the Closing Fee and the DIP Fee (each as defined in the Fee Letter (as defined in the DIP Credit Agreement)) and the Commitment Fee (each as described in the DIP Credit Agreement) (which fees shall be fully earned and approved upon entry of this Interim Order and shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Credit Agreement and the costs and expenses as may be due from time to time, including, without limitation, the fees and expenses of the professionals retained by any of the DIP Agent or DIP Lenders, 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 18(c) hereof; and

(iv) the performance of all other acts required under or in connection with the DIP Documents, including the granting of the DIP Liens and DIP Superpriority Claims and perfection of the DIP Liens as permitted herein and therein.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding and unavoidable obligations of the Loan Parties, enforceable against each Loan Party in accordance with the terms of the DIP Documents and this Interim Order. No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order to the DIP Agent and/or the DIP Lenders shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, 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.

(d) No DIP Lender or DIP Agent shall have any obligation or responsibility to monitor any Loan Party's use of the DIP Financing, and each DIP Lender or DIP Agent may rely upon each Loan Party's representations that the amount of DIP Financing requested at any time and the use thereof are in accordance with the requirements of this Interim Order, the DIP Documents, and Bankruptcy Rule 4001(c)(2).

10. *Application of Proceeds of Collateral.* As a condition to entry into the DIP Credit Agreement, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties have agreed that as of and commencing on the date of entry of the Final Order, and to the extent set forth therein, the Debtors shall apply the proceeds of DIP Collateral solely in accordance with

the Final Order, the DIP Documents, and the Approved Budget, including, to effect the Roll-Up and *thereafter* to pay accrued interest, principal and other amounts outstanding under the DIP Credit Agreement.

11. *Carve-Out*

(a) As used in this Interim Order, the term “**Carve-Out**” shall mean the sum of the following:

- (i) Clerk and U.S. Trustee Fees. All fees required to be paid to the clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code and section 3717 of title 31 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iv) below, and without being subject to any budget) (collectively, the “**Statutory Fees**”).
- (ii) Chapter 7 Trustee Fees. All reasonable and documented fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code and allowed by this Court in an amount not to exceed \$50,000 (without regard to the notice set forth in (iv) below);
- (iii) Allowed Professional Fees Incurred Prior to Carve-Out Trigger Notice. To the extent allowed by this Court at any time, whether by interim order, procedural order or otherwise, all accrued and unpaid claims for fees, costs, and expenses incurred by persons or firms retained by the Debtors pursuant to sections 327, 328 or 363 of the Bankruptcy Code (collectively, the “**Debtor Professionals**”) and retained by any official committee appointed in the Bankruptcy Cases pursuant to section 1103 of the Bankruptcy Code (collectively, the “**Committee Professionals**” and, together with the Debtors Professionals, the “**Professional Persons**,” and the fees, costs and expenses of Professional Persons other than any such financing transaction fees attributed to the Debtors securing the DIP Facility, the “**Professional Fees**”), at any time on or prior to the first business day after delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by this Court before or after delivery of a Carve-Out Trigger Notice and without regards to whether such fees, costs, and expenses are provided for in the Approved Budget or were invoiced after the Carve-Out Trigger Date (as defined below). For purposes of the Carve-Out, Professional Fees shall exclude any restructuring, sale, financing transaction fee related to the DIP Facility, success or similar fee of any Professional Person.

- (iv) Allowed Professional Fees Incurred After a Carve-Out Trigger Notice. Any Professional Fees of the Professional Persons incurred after the first Business Day following delivery by the DIP Agent of the Carve-Out Trigger Notice (as defined below), to the extent allowed by this Court at any time, whether by interim order, procedural order or otherwise, in an aggregate amount not to exceed \$1,000,000 (the amount set forth in this clause (iv) being the “**Post Carve-Out Cap**”), in each case subject to the limits imposed by paragraph 27 of this Interim Order; *provided*, that nothing herein shall be construed to impair the ability of any party to object to the allowance of the fees, expenses, reimbursement or compensation described in (i), (ii) or (iii) above on any other grounds.

(b) Without limiting or altering the scope of sub-paragraph (a) above or sub-paragraph (h) below, on a bi-weekly basis, starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the DIP Agent a statement setting forth a good-faith estimate of the amount of fees and expenses incurred during the preceding two weeks by such Professional Person (through Saturday of such week, the “**Calculation Date**”) (collectively, “**Estimated Fees and Expenses**”), 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 “**Bi-Weekly Statement**”); *provided*, that within two business days of the occurrence of the Carve-Out Trigger Date (as defined herein), each Professional Person shall deliver one additional 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 Bi-Weekly Statement has been delivered and concluding on the Carve-Out Trigger Date.

(c) Upon the occurrence and during the continuance of any Event of Default under the DIP Documents, the DIP Agent may deliver a written notice by email (or other electronic means) invoking the Post Carve-Out Cap (the “**Carve-Out Trigger Notice**”) to the

Debtors, the Debtors' lead restructuring counsel retained in the Chapter 11 Cases (Latham & Watkins LLP), the U.S. Trustee, and lead counsel to any official committee appointed in the Chapter 11 Cases. The Carve-Out Trigger Notice shall describe the Event of Default that is alleged to continue under the DIP Documents (or after the payment in full of the DIP Obligations, the Prepetition Revolver Agent describing the reason for terminating the use of Cash Collateral), and shall expressly state that the Post Carve-Out Cap has been invoked, and such notice may be delivered only on and during the continuation of an Event of Default under the DIP Documents and the termination of funding under the DIP Facility (or after the payment in full of the DIP Obligations, the termination of the use of Cash Collateral by the Prepetition Revolver Agent).

(d) On the day on which a Carve-Out Trigger Notice is received by the Debtors (such date, the "**Carve-Out Trigger Date**"), the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand to transfer to the Professional Fees Account (as defined below) cash in an amount equal to all obligations benefitting from the Carve-Out as more fully set forth below.

(e) On and after the Carve-Out Trigger Date, the DIP Agent shall deposit into a segregated account of the Debtors not subject to the control of the DIP Agent, any DIP Lender or any Prepetition Secured Party (the "**Professional Fees Account**") any cash swept or foreclosed after delivery of the Carve-Out Trigger Notice (including cash received as a result of the sale or other disposition of any assets) until the Professional Fees Account has been fully funded (inclusive of any amounts on deposit therein prior to the issuance of such Carve-Out Trigger Notice) in an amount equal to all obligations benefitting from the Carve-Out. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, following

delivery of a Carve-Out Trigger Notice, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties 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 Professional Fees Account has been fully funded in an amount equal to all obligations benefitting from the Carve-Out.

(f) Funds transferred to the Professional Fees Account shall be held in trust for the Professional Persons, the Clerk of Court and the U.S. Trustee, including with respect to obligations arising out of the Carve-Out. Funds transferred to the Professional Fees Account shall not be subject to any liens or claims granted herein or under the DIP Documents to the DIP Agent, DIP Lenders or Prepetition Secured Parties or any liens or claims granted as adequate protection, shall not constitute DIP Collateral, and shall not constitute Cash Collateral; provided that the DIP Collateral shall include the DIP Agent's (on behalf of itself and the DIP Lenders) and the Prepetition Secured Parties' reversionary interest in funds held in the Professional Fees Account, if any, after all allowed Professional Fees benefitting from the Carve-Out have been paid in full in cash pursuant to a final order not subject to appeal.

(g) Except to the extent expressly provided by further order of this Court, the Debtors may use funds held in the Professional Fees Account only to pay Professional Fees as they become allowed and payable pursuant to any interim or final orders of this Court and to pay the other amounts included in the Carve-Out, and not for any other purpose until all obligations and liabilities benefitting from the Carve-Out are paid and satisfied in full in cash.

(h) Further, notwithstanding anything to the contrary in this Interim Order, the DIP Documents, or the Prepetition Credit Documents, (i) the failure of the Professional Fees Account to be funded in an amount equal to the full amount of the Professional Fees benefitting from the Carve-Out shall not affect the priority of the Carve-Out, (ii) in no way shall the Carve-

Out, Professional Fees Account, or the Approved Budget or any of the foregoing (or any good-faith estimate of Professional Fees) be construed as a cap or limitation on the amount of the Professional Fees or the Statutory Fees due and payable by the Debtors or that may be allowed by this Court at any time (whether by interim order, final order, or otherwise), and (iii) the Debtors' authority to use proceeds from the DIP Facility, the DIP Collateral, and/or Cash Collateral on account of and to timely pay Professional Fees and the obligations benefitting from the Carve-Out shall in no way be limited or deemed limited by the Approved Budget or any good-faith estimate of Professional Fees.

(i) So long as a Carve-Out Trigger Notice has not been delivered as provided above: (i) the Debtors shall be permitted to pay Professional Fees allowed by the Court and payable under sections 328, 330 or 331 of the Bankruptcy Code or other order of the Court, as the same may become allowed by the Court and due and payable, including on an interim basis; and (ii) such payments shall not reduce, or be deemed to reduce, the Carve-Out. Without prejudice to the rights of any Professional Person to contest any such objection, nothing in this Interim Order shall be construed to impair the ability of any creditor or party in interest to object to any Professional Fees.

(j) Notwithstanding anything to the contrary in this Interim Order, the DIP Documents, or the Prepetition Credit Documents, any and all DIP Obligations, Adequate Protection Claims, and Prepetition Debt (and any and all other claims (as defined in Section 101(5) of the Bankruptcy Code), whenever accrued or arising, of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties against any Loan Party) and any and all security interests and liens securing the same, in each case, whether arising or granted in connection with postpetition financing, adequate protection, or otherwise, shall be subject to the Carve Out.

(k) Notwithstanding anything to the contrary in this Interim Order or the DIP Documents, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (i) the investigation (other than, prior to the Carve-Out Trigger Date, as permitted under paragraph 27 of this Interim Order), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation, or assertions of any defense or counterclaim, against any of the DIP Lenders, the DIP Agent, the Prepetition Lenders or the Prepetition Revolver Agent, the Prepetition Noteholders or the Prepetition Note Agent, each in such capacity, and their respective agents, attorneys, advisors or representatives each in such capacity, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, and their respective agents, attorneys, advisors or representatives, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the DIP Documents or the Prepetition Credit Documents, including without limitation the Prepetition Revolver Obligations and the Prepetition Note Obligations, (whether in such capacity or otherwise), including, in each case, without limitation, for lender liability or pursuant to section 105, 506(c), 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, (ii) attempts to modify any of the rights granted to the DIP Lenders, the DIP Agent, the Prepetition Lenders or the Prepetition Revolver Agent, or the Prepetition Noteholders or the Prepetition Note Agent hereunder or under the applicable DIP Documents or Prepetition Credit Documents (other than in connection with an Approved Chapter 11 Plan), (iii) attempts to prevent, hinder or otherwise delay any of the DIP Lenders' or the DIP Agent's assertion, enforcement or realization upon any DIP Collateral or Prepetition Collateral in accordance with the DIP Documents, this Interim Order or the Final

Order, other than to seek a determination that an Event of Default has not occurred or is not continuing, or (iv) paying any amount on account of any claims arising before the commencement of the Chapter 11 Cases unless such payments are approved by an order of the Court and permitted under the DIP Documents (including the Approved Budget).

12. *DIP Superpriority Claims.* The DIP Agent and the DIP Lenders are hereby granted, against each of the Debtors on a joint and several basis, pursuant to, and to the extent provided by, section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claims for all of the DIP Obligations (without the need to file any proof of claim) with priority over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) (including the Prepetition 507(b) Claim (as defined below)) of the Bankruptcy Code, including any and all administrative expenses or other claims arising under sections 105, 328, 330, 331, 365, 503(b), 506(c) (subject to and effective upon entry of the Final Order), 507(a)(other than section 507(a)(1), 507(b), 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations (as defined below)), 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 Loan Parties and all proceeds thereof (excluding the Loan Parties’ 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 (collectively, “**Avoidance Actions**”), but, subject only to and effective upon entry of the Final Order, including any proceeds or property recovered, unencumbered or otherwise from Avoidance

Actions, whether by judgment, settlement or otherwise (“**Avoidance Proceeds**”)), subject only to payment in full in cash of the Carve-Out. 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.

13. *DIP Liens.*

(a) As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings by the Loan Parties 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 of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (i), (ii) and (iii) below being collectively referred to as the “**DIP Collateral**”), subject only to payment in full in cash of the Carve-Out (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “**DIP Liens**”):

(i) First Lien on Unencumbered Property. 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 Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date (including pursuant to Section 546(b) of the Bankruptcy Code), is not subject to a valid, perfected and non-avoidable lien (collectively, “**Unencumbered Property**”), including, without limitation, any and all unencumbered cash of the Loan Parties and any

investment of such cash, 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 of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Avoidance Actions, including, but subject only to and effective upon entry of the Final Order, the Avoidance Proceeds;

(ii) Priming Liens on Prepetition Collateral. 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 each Loan Party (including, without limitation, any and all cash and cash collateral and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including, without limitation, post-petition intercompany claims against the Loan Parties and their non-Debtor affiliates), 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 the foregoing), whether now existing or hereafter acquired, that is subject to the Prepetition Liens, which lien shall be senior in all respects to such Prepetition Liens. Such security interests and liens shall be senior in all respects to the interests in such property of the

Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties (including, without limitation, the Adequate Protection Liens granted hereunder);

(iii) Liens Junior to Certain Other Liens. 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 each Loan Party that, on or as of the Petition Date (including pursuant to Section 546(b) of the Bankruptcy Code), is subject to valid, perfected and unavoidable liens senior to the Prepetition Liens in existence immediately prior to the Petition Date (the “**Senior Liens**”), if any; *provided* that, nothing in the foregoing shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such Senior Liens are not permitted thereunder; and *provided further* that, the DIP Liens shall not prime any valid and enforceable rights of recoupment or setoff asserted by Marabou Energy Management, LLC and Marabou Superior Pipeline, LLC.

(iv) Liens Senior to Certain Other Liens. The DIP Liens shall not be (a) subject or subordinate to or made *pari passu* with (1) any lien or security interest that is avoided and preserved for the benefit of the Loan Parties and their estates under section 551 of the Bankruptcy Code, (2) unless otherwise provided for in the DIP Documents or in this Interim Order, or unless otherwise required by Section 546(b) of the Bankruptcy Code or applicable non-bankruptcy law, any liens or security interests arising after the Petition Date, including, without limitation, 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 Loan Parties, or (3) any intercompany or affiliate liens or security interests of the Loan Parties; or (b) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

14. *Protection of DIP Lenders' Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding Commitments (as defined in the DIP Credit Agreement) under the DIP Credit Agreement, 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 Credit Documents or this Interim Order, or otherwise seek to exercise or enforce any rights or remedies against such DIP Collateral or the Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, such DIP Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP Obligations and termination of the Commitments), to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; (iii) 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 such DIP Collateral unless, solely as to this clause (iii), the DIP Agent or the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date; and (iv) at the request of the DIP Agent, deliver or cause to be delivered, at the Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent or the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such DIP Collateral subject to any sale or disposition.

(b) To the extent any Prepetition Secured Party has possession of any Prepetition Collateral or DIP Collateral or has control with respect to any Prepetition Collateral

or DIP Collateral, or has been noted as secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Collateral, then such Prepetition Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Agent and the DIP Lenders, and the Prepetition Agents shall comply with the instructions of the DIP Agent with respect to the exercise of such control.

(c) Any proceeds of Prepetition Collateral received by the Prepetition Agents or any Prepetition Secured Party in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by the Prepetition Agents 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 Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Agent is hereby authorized to make any such endorsements as agent for each of the Prepetition Agents or any such Prepetition Secured Party. This authorization is coupled with an interest and is irrevocable.

(d) Upon the occurrence and during the continuance of an Event of Default under the DIP Documents, the DIP Required Lenders may, in their sole and absolute discretion, take any or all of the following actions: (i) immediately (1) deliver a notice of an Event of Default, (2) terminate any pending Commitments, (3) terminate the DIP Facility, and (4) terminate the use of Cash Collateral; (ii) exercise their unqualified right to credit bid up to the full amount of the outstanding DIP Obligations (including any accrued interest), which credit bid may, with the consent of the applicable Prepetition Agent, incorporate a credit bid of the Prepetition Obligations, in any sale of the DIP Collateral (or any part thereof), without the need

for further Court order authorizing the same, and whether such sale is effectuated through section 363(k) or 1129 of the Bankruptcy Code, by a chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise, and (iii) upon five (5) days' written notice from the DIP Required Lenders (the "**Remedies Notice Period**") (which shall run concurrently with any notice required to be provided under the DIP Documents) via email to lead counsel to the Debtors (Latham & Watkins LLP), lead counsel to any Creditors' Committee appointed, and the U.S. Trustee to declare, in their sole and absolute discretion, that the automatic stay of Section 362 of the Bankruptcy Code shall be terminated automatically without further order of this Court, without the need for filing any motion for relief from the automatic stay or any other pleading, for the limited purpose of permitting the DIP Lenders to do any of the following: (1) foreclose on the DIP Collateral; (2) enforce all of the guaranty rights; (3) charge the default rate of interest on the DIP Loans; and (4) declare the principal of and accrued interest, fees, and expenses constituting the obligations under the DIP Facility to be due and payable. Subject to and effective upon entry of the Final Order, in no event shall the DIP Agent, the DIP Lenders or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral. Further, subject only to and effective upon entry of the Final Order, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the secured claims of the Prepetition Secured Parties.

(e) No rights, protections or remedies of the DIP Agent or the DIP Lenders granted by the provisions of this Interim Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Loan Parties' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Loan Parties' authority to continue to use Cash Collateral; or (iii) except to the

extent expressly set forth therein, the terms of any other order or stipulation related to the Loan Parties' continued use of Cash Collateral or the provision of adequate protection to any party.

15. *Limitation on Charging Expenses Against Collateral.* Subject to and effective upon the entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent, the DIP Lenders, the Prepetition Revolver Agent, the Prepetition Lenders, the Prepetition Note Agent, or the Prepetition Noteholders, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Prepetition Revolver Agent, the Prepetition Lenders, the Prepetition Note Agent, or the Prepetition Noteholders and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Agent, the DIP Lenders, the Prepetition Revolver Agent, the Prepetition Lenders, the Prepetition Note Agent, or the Prepetition Noteholders to any charge, lien, assessment or claim against the DIP Collateral under section 506(c) of the Bankruptcy Code or otherwise.

16. *Payments Free and Clear.* Subject to the Carve-Out and subject to and effective upon entry of the Final Order with respect to section 506(c) of the Bankruptcy Code, any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Lenders pursuant to and in accordance with the provisions of this Interim Order or Final Order (if and when entered) or the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim

or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code (subject to and effective upon entry of the Final Order, and to the extent set forth therein, approving the waiver of the Debtors' rights under sections 506(c) and 552(b) of the Bankruptcy Code), whether asserted or assessed by, through or on behalf of the Debtors.

17. *Use of Cash Collateral.* The Loan Parties are hereby authorized, subject to the terms and conditions of this Interim Order, to use all Cash Collateral and the Prepetition Secured Parties are directed promptly to turn over to the Loan Parties all Cash Collateral received or held by them; *provided* that (a) the Prepetition Secured Parties are granted the adequate protection as hereinafter set forth and (b) except on the terms and conditions of this Interim Order, the Loan Parties shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court.

18. *Adequate Protection of Prepetition Secured Parties.* The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any ("**Diminution in Collateral Value**"), for any reason provided for under the Bankruptcy Code, including, the sale, lease or use by the Loan Parties of the Prepetition Collateral, the priming of the Prepetition Secured Parties' security interests and liens on the Prepetition Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Interim Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the "**Adequate Protection Claims**"). In consideration of the foregoing, to the extent of any Diminution in Collateral Value, each of the Prepetition Revolver Agent, for the

benefit of the Prepetition Lenders, and the Prepetition Note Agent, for the benefit of the Prepetition Noteholders, are hereby granted, as applicable, the following (collectively, the “**Adequate Protection Obligations**”):

(a) Prepetition Adequate Protection Liens. The Prepetition Revolver Agent (for itself and for the benefit of the Prepetition Lenders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Lenders’ Adequate Protection Claim, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral including, without limitation, Unencumbered Property and, subject to and effective upon entry of the Final Order, the Avoidance 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 Senior Liens, if any, and (ii) the payment in full in cash of the Carve-Out (the “**Prepetition Lenders Adequate Protection Liens**”). The Prepetition Note Agent (for itself and for the benefit of the Prepetition Noteholders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), in the amount of the Prepetition Noteholders’ Adequate Protection Claim, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral including, without limitation, Unencumbered Property and, subject to and effective upon entry of the Final Order, the Avoidance Proceeds, in each case subject and subordinate only to (i) the DIP Liens, (ii) any prepetition liens that are senior in priority to the Prepetition Note Liens, including the Prepetition Revolver Liens and the Senior Liens, if any, (iii) the Prepetition Lenders Adequate Protection Liens, and (iv) the payment in full in cash of the Carve-Out (collectively,

the “**Prepetition Note Adequate Protection Liens**” and, together with the Prepetition Lenders Adequate Protection Liens, the “**Adequate Protection Liens**”). For the avoidance of doubt, the Prepetition Note Adequate Protection Liens shall be subordinated to the Prepetition Lenders Adequate Protection Liens on the same basis as all other Prepetition Liens securing the claims of the Prepetition Noteholders are so subordinated to the liens securing the Prepetition Revolver Obligations owed to the Prepetition Lenders.

(b) Prepetition Section 507(b) Claim. The Prepetition Revolver Agent (for itself and the benefit of the Prepetition Lenders) and the Prepetition Note Agent (for itself and the benefit of the Prepetition Noteholders) are hereby granted, subject to the payment in full in cash of the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claims having, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified in section 507(b) of the Bankruptcy Code (the “**Prepetition 507(b) Claim**”), which Prepetition 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, without limitation, subject to entry of the Final Order, the Avoidance Proceeds. The Prepetition 507(b) Claim shall be subject and subordinate to the payment in full in cash of the Carve-Out and the DIP Superpriority Claims. Except to the extent expressly set forth in this Interim Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the Prepetition 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 the Carve-Out) have indefeasibly been paid in cash in full and all Commitments have been terminated.

(c) DIP Secured Parties' and Prepetition Secured Parties' Fees and Expenses.

Without duplication of amounts required to be paid pursuant to the DIP Documents, (i) upon entry of this Interim Order, the Loan Parties shall pay in cash all fees, expenses, and disbursements payable to the Prepetition Secured Parties, including all fees, expenses, and disbursements payable to the Prepetition Agents and all professional fees and expenses of the Prepetition Secured Parties (including the fees and expenses of Weil, Gotshal & Manges LLP and Pachulski, Stang, Ziehl & Jones LLP, in each case, whether accrued prior to or after the Petition Date). The post-petition payment of the fees, expenses and disbursements set forth in the foregoing sentence, along with the professional fees and expenses of the DIP Secured Parties, shall be made within ten (10) days (which time period may be extended by the applicable professional) upon the receipt by the Debtors, the Creditors' Committee (if any) and the U.S. Trustee (the "**Review Period**") of invoices therefor (the "**Invoiced Fees**") and without the necessity of filing formal fee applications, including such amounts arising before or after the Petition Date. The invoices for such Invoiced Fees shall include a general description of the nature of the matters worked on, a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate), the number of hours billed (except for financial advisors compensated on other than an hourly basis), and with respect to the invoices of law firms, the year of law school graduation for each attorney; *provided, however*, that any such invoice: (i) may be redacted to protect privileged, confidential or proprietary information, *provided, however* that the U.S. Trustee reserves the right to seek to obtain unredacted copies of such invoices, and (ii) shall not be required to contain individual time detail, *provided, however*,

that the U.S. Trustee reserves the right to seek copies of invoices containing the detailed time entries of any professional. The Debtors, the Creditors' Committee (if any) and the U.S. Trustee may object to any portion of the Invoiced Fees (the "**Disputed Invoiced Fees**") within the Review Period by written notice to the applicable professional or by filing with the Court a motion or other pleading, on at least ten (10) days' prior written notice to the applicable Prepetition Secured Party and the applicable professional of any hearing on such motion or other pleading, setting forth the specific objections to the Disputed Invoiced Fees in reasonable narrative detail and the bases for such objections; *provided*, that payment of any undisputed portion of Invoiced Fees shall be paid within the time frame set forth above and shall not be delayed based on any objections thereto; *provided, further*, that the applicable parties shall endeavor in good faith to consensually resolve any such dispute prior to the filing of any such motion or pleading.

(d) Prepetition Secured Parties' Adequate Protection Payment and Interest Accrual. Subject to the Carve Out, as further adequate protection, the Debtors shall provide adequate protection to the applicable Prepetition Secured Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (a) to the Prepetition Revolver Agent, on behalf of the Prepetition Lenders, all accrued and unpaid interest and fees at the "Default Rate" and as provided under the Prepetition Revolving Credit Agreement (*provided* that, interest shall cease to accrue under the Prepetition Revolving Credit Agreement on any Roll-Up Loans, and such Roll-Up Loans shall accrue interest under and in accordance with the terms of the DIP Credit Agreement), and (b) immediately upon entry of this Interim Order, to the Prepetition Secured Parties, payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including, without limitation, the reasonable

and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third party consultants, and other vendors) incurred by the Prepetition Secured Parties, whether arising prior to or after the Petition Date, subject to the procedures set forth in paragraph 18(c) above.

(e) Information Rights. The Debtors shall promptly provide the Prepetition Revolver Agent, on behalf of itself and the Prepetition Lenders, and the Prepetition Note Agent, on behalf of itself and the Prepetition Noteholders, with all required written financial reporting and other periodic reporting that is required to be provided to the DIP Agent or the DIP Lenders under the DIP Credit Agreement.

19. *Adequate Protection Finding*. Subject to the Carve Out, 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 Parties hereunder is insufficient to compensate for any diminution in value of their respective interests in the Collateral during the Chapter 11 Cases. 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 and sufficient to protect the interests of the Prepetition Secured Parties.

20. *Consent to Adequate Protection; Right to Seek Additional Adequate Protection; No Admission*. The Prepetition Secured Parties have consented to the Adequate Protection Obligations, the priming of the Prepetition Liens by the DIP Liens, and the use of Cash Collateral; *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; and *provided, further*, that such consent shall be of no force and effect in the event this Interim Order is not entered or is entered and subsequently reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the Prepetition Revolver Agent, the Prepetition Lenders, the Prepetition Note Agent, and the Prepetition Noteholders) or the DIP Documents and DIP Facility as set forth herein are not approved. This Interim Order: (i) is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of each of the Prepetition Secured Parties to request additional or alternative forms of adequate protection from the Loan Parties, and the Loan Parties' and any other party in interest's right to object to such requests are hereby preserved; and (ii) shall not be deemed an admission, acknowledgement, or stipulation by the Prepetition Secured Parties that the Prepetition Secured Parties are in fact adequately protected by the terms and conditions of this Interim Order or otherwise.

21. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) The DIP Agent, the DIP Lenders, and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Loan Parties, 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, or 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 under the DIP Documents or this Interim Order. Whether or not the DIP Agent, on behalf of the DIP Lenders or the Prepetition Secured Parties shall, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, 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, 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 (subject to paragraph 26 below). Upon the request of the DIP Agent, each of the Prepetition Secured Parties and the Loan Parties, without any further consent of any party, is authorized (in the case of the Loan Parties) and directed (in the case of the Prepetition Secured Parties) to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Agent, 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 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 vacated and modified to the extent necessary to permit the DIP Agent to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

(c) 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 any Debtor is a party, or any such relevant Debtor's rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (x) the abandonment, invalidation, unenforceability or other

impairment of any right, title or interest of any Debtor therein or (y) in 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 (x) and (y), 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* that the DIP Liens, Prepetition Lenders Adequate Protection Liens, the DIP Superpriority Claims, and the Prepetition 507(b) Claim shall in all events attach to and have recourse from all proceeds, products, offspring or profits from any and all Specified Contracts (including from the sale, transfer, disposition or monetization thereof).

22. *Proceeds of Subsequent Financing.* If the Debtors, any trustee, any examiner with enlarged powers, 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) in violation of the DIP Documents at any time prior to the repayment in full in cash of all DIP Obligations and the termination of the DIP Lenders’ obligation to extend credit under the DIP Facility, 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, then all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agent, for the benefit of itself and the DIP Lenders, to be applied as set forth the DIP Documents and this Interim Order.

23. *Disposition of DIP Collateral; Rights of DIP Agent and DIP Lenders.* The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any DIP Collateral

without the prior written consent of the DIP Agent (and no such consent shall be implied, from any other action, inaction or acquiescence), except as expressly permitted in the DIP Documents.

24. *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 Agent and the DIP Lenders or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding. No postpetition lien or security interest shall be granted by the Debtors to any other party in any of the Specified Contracts without first granting such lien or security interest to the DIP Agent, the DIP Lenders or the Prepetition Secured Parties (solely with respect to the Adequate Protection Obligations), as applicable.

(b) Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise: (i) the DIP Superpriority Claims, the Prepetition 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 and Adequate Protection Obligations shall have been indefeasibly paid in full in cash (and such DIP Superpriority Claims, Prepetition 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) to the greatest extent allowed by applicable law, this Court shall retain 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, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, protections, and benefits granted under section 364(e) of the Bankruptcy Code.

(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 Agent, the DIP Lenders, 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 any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of the Chapter 11 Cases or by any other act or omission of the Debtors; (ii) the entry of an order approving the sale of any DIP 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 any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Loan Parties 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 if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, 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 Agent, the DIP Lenders, and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid

in full in cash, as set forth herein and in the DIP Documents, and the Commitments have been terminated.

25. *Cash Management.* Unless otherwise agreed by the DIP Agent or otherwise permitted by the DIP Documents, and pursuant to further order of the Court, 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.

26. *Effect of Stipulations on Third Parties.* The Debtors’ stipulations, admissions, agreements, and releases contained in paragraphs 6 and 7 of this Interim Order, shall be binding upon the Debtors and any successor thereto in all circumstances and for all purposes. The Debtors’ stipulations, admissions, agreements and releases contained in paragraphs 6 and 7 of this Interim Order, shall be binding upon all other parties in interest, in all circumstances and for all purposes unless: (a) a party in interest, including but not limited to any Creditors’ Committee appointed in these cases, with requisite standing, has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph 26) by no later than (i) (x) with respect to parties in interest (other than the Creditors’ Committee) with requisite standing, 75 calendar days after entry of this Interim Order and (y) with respect to the Creditors’ Committee, 60 calendar days after the appointment of the Creditors’ Committee, if any, (ii) any such later date as has been agreed to, in writing, by the Prepetition Revolver Agent (with the consent of the Required Lenders (as defined in the Prepetition Revolving Credit Agreement)) or the Prepetition Note Agent, as applicable, and (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable period of time set forth in this paragraph (the time period

established by the foregoing clauses (i), (ii), and (iii), the “**Challenge Period**”), *provided, however,* that if the case converts to a Chapter 7, or if a Chapter 11 trustee is appointed, prior to the end of the Challenge Period, the Challenge Period shall be extended for the Chapter 7 or Chapter 11 trustee to the later of (i) the time that is remaining in the Challenge Period plus 10 days and (ii) such date designated by the Court, (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of any of the Prepetition Debt or the Prepetition 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 any of the Prepetition Secured Parties or their respective subsidiaries, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each a “**Representative**” and, collectively, the “**Representatives**”) in connection with matters related to the Prepetition Credit Documents, the Prepetition Debt, the Prepetition 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 prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding then: (a) the Debtors’ stipulations, admissions, agreements and releases contained in paragraphs 6 and 7 of this Interim Order, shall be binding on all parties in

interest, including, without limitation, the Creditors' Committee (if any); (b) the obligations of the Loan Parties under the Prepetition Credit Documents, including the Prepetition Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s), other than to payment in full in cash of the Carve-Out; (c) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens on the Prepetition Collateral, not subject to recharacterization, subordination, avoidance or other defense, other than to payment in full in cash of the Carve-Out; and (d) the Prepetition Debt and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by the Creditors' Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by the Creditors' Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Documents shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in paragraphs 6 and 7 of this Interim Order, 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, including the Creditors' Committee (if any), and on any other person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Creditors' Committee (if any) or any non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Credit Documents, the Prepetition Debt or the Prepetition Liens.

27. *Limitation on Use of DIP Loans and DIP Collateral.* Notwithstanding any other provision of this Interim Order or any other order entered by this Court, no DIP Loans, DIP Collateral, Prepetition Collateral or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, any Guarantor, any official committee appointed in the Chapter 11 Cases, or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (i) in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (a) against any of the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, in each case in such capacities, or any action purporting to do the foregoing in respect of the Prepetition Debt, the Prepetition Note Obligations, the Prepetition Second Lien Notes Obligations, liens on the Prepetition Collateral, DIP Obligations, DIP Liens, DIP Superpriority

Claims and/or the adequate protection obligations, adequate protection liens and superpriority claims granted to the Prepetition Lenders and the Prepetition Noteholders, 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 Revolver Obligations, Prepetition Note Obligations, the DIP Obligations and/or the liens, claims, rights, or security interests granted under this Interim Order, the Final Order, the DIP Documents, the Prepetition Credit Documents including, in each case, without limitation, 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 Creditors' Committee may investigate any potential challenges with respect to the Prepetition Credit Documents, the Prepetition Revolver Obligations, the Prepetition Note Obligations, the Prepetition Revolver Liens, and the Prepetition Note Liens during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed \$35,000 in the aggregate; (ii) to prevent, hinder, or otherwise delay the Prepetition Secured Parties', the DIP Agent's or the DIP Lenders', as applicable, enforcement or realization on the Prepetition Revolver Obligations, the Prepetition Note Obligations, the Prepetition Collateral, the DIP Obligations, the DIP Collateral, and the liens, claims, and rights granted to such parties under the Orders, each in accordance with the DIP Documents, the Prepetition Credit Documents or this Interim Order; (iii) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Agent or the DIP Lenders under this Interim Order, the Prepetition Credit Documents, or the DIP Documents, as applicable (other than in connection with an Approved Chapter 11 Plan); (iv) 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 DIP Liens, the DIP Superpriority Claims, adequate protection liens, and superpriority claims granted to the Prepetition Lenders or the Prepetition Noteholders, as applicable, unless all DIP Obligations, Prepetition Revolver Obligations, Prepetition Note Obligations, adequate protection obligations, and claims granted to the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties under this Interim Order, have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Required Lenders (as defined in the DIP Credit Agreement); or (v) to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the DIP Required Lenders (as defined in the DIP Credit Agreement) or are otherwise included in the Approved Budget.

28. *Loss or Damage to Collateral.* Nothing in this Interim Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, any DIP Lender or any of 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 business or in connection with their restructuring efforts (other than the Carve-Out). The DIP Agent and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of the DIP Collateral shall be borne by the Loan Parties.

29. *Interim Order Governs.* In the event of any inconsistency or conflict between the provisions of this Interim Order, on the one hand, and the DIP Documents, on the other hand, the provisions of this Interim Order shall govern.

30. *Binding Effect; Successors and Assigns.* Subject to paragraph 26 above, 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, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Creditors' Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, and the Debtors and their respective successors and assigns; *provided* that the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties shall have no obligation to permit the use of the 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.

31. *Limitation of Liability.* In determining to make any loan or other extension of credit under the DIP Credit Agreement, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Agent and the DIP Lenders shall not (i) be deemed to be in "control" of the operations of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and (iii) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator"

with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

32. *No Waiver.* No delay or failure by the Prepetition Secured Parties, the DIP Agent or any DIP Lender in the exercise of its rights and remedies under the DIP Documents or this Interim Order, as applicable, shall constitute a waiver, in whole or in part, of any of such lender's, noteholder's, agent's, or DIP Lender's rights hereunder or otherwise.

33. *Proofs of Claim.* The Prepetition Agents shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case in order to assert claims on behalf of itself and the Prepetition Secured Parties for payment of the Prepetition Revolver Obligations or the Prepetition Note Obligations, as applicable, arising under the Prepetition Credit Documents, including, without limitation, any principal, premium, unpaid interest, fees, expenses, and other amounts under the Prepetition Credit Documents. The statements of claim in respect of the Prepetition Revolver Obligations and Prepetition Note Obligations 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. The stipulations of the Debtors set forth in paragraph 6 hereof shall be deemed to constitute a timely filed proof of claim for the Prepetition Revolver Agent in respect of all Prepetition Revolver Obligations and the Prepetition Note Agent in respect of all Prepetition Note Obligations. In addition, the Prepetition Revolver Agent and the Prepetition Note Agent will not be required to file any request for allowance and/or payment of any administrative expenses, and this Interim Order shall be deemed to constitute a timely filed request for

allowance and/or payment of any Prepetition Revolver Obligations or Prepetition Note Obligations constituting administrative expenses, as applicable and if any.

34. *Insurance.* To the extent that any Prepetition Agent is listed as loss payee under the Borrowers' or Guarantors' insurance policies, the DIP Agent is also deemed to be the loss payee 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.

35. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any Local Bankruptcy 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 is no stay of execution or effectiveness of this Interim Order.

36. *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.

37. *Payments Held in Trust.* Except as expressly permitted in this Interim Order or the DIP Documents, in the event that any Prepetition Secured Party 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 prior to indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the Commitments in accordance with the DIP Documents, such Prepetition Secured Party 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 Agent and the DIP Lenders and shall

immediately turn over such proceeds to the DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Interim Order.

38. *Credit Bidding.* (a) The DIP Agent shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the DIP Collateral and (b) subject to paragraph 26 hereof, the Prepetition Lenders and the Prepetition Noteholders shall have the right to credit bid up to the full amount of the Prepetition Revolver Obligations and the Prepetition Note Obligations, respectively, in connection with any sale of any DIP Collateral pursuant to section 363 of the Bankruptcy Code, under a plan of reorganization or liquidation under section 1129 of the Bankruptcy Code, or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code, in each case, to the extent provided for in section 363(k) of the Bankruptcy Code, without, subject to and effective upon entry of the Final Order, the need for further Court order authorizing the same, and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise. For the avoidance of doubt, subject to paragraph 26 hereof, the DIP Lenders' exercise of their unqualified right to credit bid up to the full amount of the outstanding DIP Obligations (including any accrued interest) in any sale of the Collateral (or any part thereof) may include, with the consent of the applicable Prepetition Agent on behalf of the applicable Prepetition Secured Party, a credit bid of the Prepetition Obligations.

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

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

41. *Retention of Jurisdiction.* The Court shall retain jurisdiction to implement, interpret, and enforce the provisions of this Interim Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

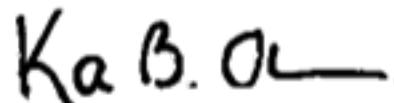
42. *Final Hearing.* The Final Hearing is scheduled for **August 14, 2019, at 11:00 a.m., (prevailing Eastern Time)** before the Court.

43. *Objections.* Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be filed with the Clerk of Court and served upon: (i) the U.S. Trustee 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)); (ii) the Debtors, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (iii) proposed counsel for the Debtors, (a) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq. and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com and liza.burton@lw.com)), and (b) Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel for the DIP Agent, the DIP Lenders and the Prepetition Secured Parties, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 (Attn: Matt S. Barr, Esq., David N. Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq.); and (v) if any statutory committee has been

appointed in the Chapter 11 Cases, counsel to such committee, in each case by no later than **August 7, 2019, at 4:00 p.m. (prevailing Eastern Time)**.

44. The Debtors shall within three (3) business days of its entry serve copies of this Interim Order Interim Order, together with a notice of the Final Hearing (which shall constitute adequate notice of the Final Hearing, including, without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under sections 506(c) and 552(b) of the Bankruptcy Code) to the following parties: all parties having been given notice of the Interim Hearing; any party that has filed a request for notices with this Court; the Creditors' Committee after the same has been appointed, or such Creditors' Committee's counsel, if the same shall have been appointed; the largest 20 unsecured creditors of the Debtors; all parties known to the Debtors to be asserting liens against or security interest in any of the DIP Collateral, the Cash Collateral or Prepetition Collateral; the Internal Revenue Service; all state taxing authorities in the states in which the Debtors have any tax liabilities; any federal or state regulatory authorities governing the Debtors' industry; the Environmental Protection Agency and state environmental agencies in the states in which the Debtors operate; the U.S. Mining Safety and Health Administration; the Securities and Exchange Commission; the U.S. Attorney's Office; the Delaware Attorney General; and the United States Trustee. To the extent that any of the above parties have not already been served with the Motion, the Debtors shall serve the Motion on them as well.

Dated: July 17th, 2019
Wilmington, Delaware



KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

DIP Credit Agreement

\$35,000,000

**SENIOR SECURED PRIMING AND SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AND
SECURITY AGREEMENT**

**EMERGE ENERGY SERVICES LP,
as Parent Guarantor,**

**EMERGE ENERGY SERVICES OPERATING LLC,
SUPERIOR SILICA SANDS LLC,
as Borrowers,**

**EMERGE ENERGY SERVICES FINANCE CORPORATION,
as a Guarantor**

**HPS INVESTMENT PARTNERS, LLC,
as Agent and Collateral Agent,**

and

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

July [], 2019

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SENIOR SECURED PRIMING AND SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

This Senior Secured Priming and Superpriority Debtor-In-Possession Credit and Security Agreement, dated as of July [], 2019, among EMERGE ENERGY SERVICES LP, a Delaware limited partnership ("Parent Guarantor"), EMERGE ENERGY SERVICES OPERATING LLC, a Delaware limited liability company ("Emerge"), SUPERIOR SILICA SANDS LLC, a Texas limited liability company ("SSS" and together with Emerge and each Person joined hereto as a borrower from time to time, collectively, the "Borrowers," and each individually a "Borrower"), the financial institutions which are now or which hereafter become a party hereto (collectively, the "Lenders" and each individually a "Lender"), and HPS INVESTMENT PARTNERS, LLC ("HPS"), as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities, the "Agent").

WHEREAS, on July [], 2019 (the "Petition Date"), (i) the Parent Guarantor, (ii) the Borrowers, (iii) Emerge Energy Services Finance Corporation, a Delaware corporation and (iv) Emerge Energy Services GP, LLC, a Delaware limited liability company ((i) though (iv) collectively, the "Debtors" and each individually, a "Debtor"), commenced Chapter 11 Case Nos [] through [], as administratively consolidated as Chapter 11 Case No [] (collectively, the "Cases" and each individually, a "Case") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections [1107(a)] and [1108] of the Bankruptcy Code.

WHEREAS, the Parent Guarantor, the Borrowers, the Agent and the Lenders have agreed to enter into this Agreement, pursuant to which the Lenders will provide (i) new-money loans in an aggregate principal amount of up to \$35,000,000 and (ii) roll-up loans in an aggregate principal amount equal to the proceeds of Collateral received on and from the Closing Date pursuant to the terms and conditions of this Agreement (collectively, the "DIP Facility"), with all of the Borrowers' obligations under the DIP Facility to be guaranteed by each Guarantor;

WHEREAS, the DIP Facility constitutes a DIP Financing under and as defined in the First Lien/Second Lien Intercreditor Agreement; and

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants and agreements hereinafter set forth and intending to be legally bound hereby, covenant and agree as follows:

I. DEFINITIONS.

1.1. Accounting Terms. As used in this Agreement, the Other Documents or any certificate, report or other document made or delivered pursuant to this Agreement, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein. If at any time (i) any change in GAAP or (ii) any change in the application of GAAP concurred by the Credit Parties' independent public accountants, would affect the requirements or covenants set forth in this Agreement or any Other Document, including, without limitation, any change as to whether leases are required to be capitalized for financial reporting purposes, and either the Borrowing Agent or the Required Lenders shall so request, Agent, Lenders and the Credit Parties shall negotiate in good faith to amend such requirement, including, without limitation, the Indebtedness negative covenant, to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, such requirement shall continue to be computed in accordance with GAAP prior to such change therein.

1.2. General Terms. For purposes of this Agreement the following terms shall have the following meanings:

“Accountants” shall mean an independent certified public accounting firm selected by Parent Guarantor and reasonably satisfactory to Agent.

“Acquisition” shall mean a transaction or series of transactions resulting, directly or indirectly, in (a) acquisition of a business, division, or substantially all assets of a Person; (b) record or beneficial ownership of 50% or more of the Equity Interests of a Person; or (c) merger, consolidation or combination of a Credit Party or any Subsidiary thereof with another Person that is not a Credit Party.

“Actual Cash Receipts” means the sum of all receipts received by the Credit Parties during the relevant Period of determination, as determined in a manner consistent with the Approved Budget.

“Actual Disbursement Amount” shall mean the sum of all disbursements, expenses and payments made by the Credit Parties during the relevant Period of determination, as determined in a manner consistent with the Approved Budget.

“Actual Net Cash Flow” shall mean the sum of (i) Actual Cash Receipts for the relevant Period of determination, minus (ii) the Actual Disbursement Amount for the relevant Period of determination.

“Adequate Protection Liens” has the meaning assigned to the term “Adequate Protection Liens” in the Interim Order (or the Final Order, when applicable).

“Adequate Protection Superpriority Claims” has the meaning assigned to the term “Adequate Protection Superpriority Claims” in the Interim Order (or the Final Order, when applicable).

“Advances” shall mean all advances made under this Agreement, including Roll-Up Loans.

“Affected Lender” shall have the meaning set forth in Section 3.11 hereof.

“Affiliate” of any Person shall mean (a) any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, or (b) any Person who is a director, managing member, general partner or officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote fifteen percent (15%) or more of the Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for any such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

“Agent” shall have the meaning set forth in the preamble to this Agreement and shall include its successors and assigns.

“Agreement” shall mean this Senior Secured Priming and Superpriority Debtor-In-Possession Credit and Security Agreement.

“Allocable Amount” shall have the meaning set forth in Section 17.11(b) hereof.

“Alternate Base Rate” shall mean, for any day, a rate per annum equal to the highest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus one half of one-percent (1/2 of 1%), and (iii) the sum of the LIBOR Rate with a one (1) month interest period plus one percent (1.0%), so long as a LIBOR Rate is offered, ascertainable and not unlawful.

“Anti-Terrorism Laws” shall mean any Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, bribery or corruption, including, without limitation, any sanctions imposed by the U.S. Government (including, without limitation, the Office of Foreign Assets Control), the United Nations Security Council, the European Union, and Her Majesty’s Treasury.

“Applicable Law” shall mean all Laws applicable to the Person, conduct, transaction, covenant, Other Document or contract in question, including as to any Collateral located in Canada, the PPSA.

“Applicable Margin” shall mean an amount equal to (i) 7.00 percentage points for Advances consisting of Domestic Rate Loans and (ii) 8.00 percentage points for Advances consisting of LIBOR Rate Loans.

“Applicable Percentage” shall mean with respect to any Lender a percentage equal to a fraction the numerator of which is the aggregate outstanding principal amount of the Advances and unused Commitments of such Lender and the denominator of which is the aggregate outstanding principal amount of the Advances and unused Commitments of all Lenders.

“Approved Budget” shall mean the Initial Approved Budget prepared by the Borrowing Agent and initially furnished to Agent on the Closing Date and which is approved by, and in form and substance satisfactory to, the Required Lenders in their sole discretion, as the same may be updated, modified or supplemented from time to time as provided in Section 6.11, which shall include information on a line item basis as to (w) Budgeted Cash Receipts, (x) Budgeted Disbursement Amounts, (y) Budgeted Net Cash Flow, and (z) projected total Liquidity, in each case for no less than the period beginning on the Closing Date and ending no earlier than eighteen (18) weeks thereafter.

“Approved Budget Variance Report” shall mean a weekly report provided by the Borrowing Agent to Agent (i) showing by line item Actual Disbursement Amounts, Actual Cash Receipts and Actual Net Cash Flow for the last day of the Prior Week and the Cumulative Period, noting therein all variances, on a line-item and cumulative basis, from the amounts set forth for such Period in the Approved Budget as in effect for such Prior Week and Cumulative Period, and shall include explanations for all material variances, and (ii) certified by an Authorized Officer of the Borrowing Agent.

“Approved Chapter 11 Plan” means a plan of reorganization that is acceptable to the Agent and the Lenders in their sole and absolute discretion.

“Approved Plan Effective Date” shall have the meaning set forth in Section 6.16(j).

“Authority” shall have the meaning set forth in Section 4.18(b) hereof.

“Authorized Officer” of any Person shall mean the Chairman, Chief Financial Officer, Chief Executive Officer, Vice President, a chief restructuring officer acceptable to Agent in its sole discretion (it being understood that the chief restructuring officer and the restructuring officer of the Restructuring Advisor are acceptable to the Agent), or other authorized officer of such Person designated by Borrowing Agent.

“Average Life” shall mean, as of the date of determination, with respect to any Indebtedness, the number of years obtained by dividing (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the then outstanding principal amount of such Indebtedness.

“Bail-In Action” shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Court” shall have the meaning set forth in the recitals to this Agreement.

“Benefited Lender” shall have the meaning set forth in Section 2.10(e) hereof.

“Borrower” or “Borrowers” shall have the meaning set forth in the preamble to this Agreement and shall extend to all permitted successors and assigns of such Persons.

“Borrowers’ Account” shall have the meaning set forth in Section 2.7 hereof.

“Borrowing Agent” shall mean Emerge.

“Borrowing Notice” shall mean a notice by the Borrowing Agent in accordance with the terms of Section 2.2 and substantially in the form of Exhibit 1.2(b) to this Agreement (or another form reasonably satisfactory to the Agent).

“Budget Certificate” shall mean a certificate in the form of Exhibit 6.11, in form and substance satisfactory to Agent in its sole discretion.

“Budgeted Cash Receipts” means the sum of the line items contained in the Approved Budget under the headings “Cash Collections” during the relevant Period of determination.

“Budgeted Disbursement Amount” shall mean the sum of the line items contained in the Approved Budget under the heading “Cash Disbursements” during the relevant Period of determination.

“Budgeted Net Cash Flow” means the sum of (i) the Budgeted Cash Receipts for the relevant Period of determination, minus (ii) the Budgeted Disbursement Amount for the relevant Period of determination.

“Business Day” shall mean any day other than Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in East Brunswick, New Jersey and, if the applicable Business Day relates to any LIBOR Rate Loans, such day must also be a day on which dealings are carried on in the London interbank market.

“Capital Expenditures” shall mean, for any period, with respect to any Person, the aggregate of all expenditures by such Person for the acquisition or leasing (pursuant to a Capital Lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) which are required to be capitalized under GAAP on a consolidated balance sheet of such Person, other than expenditures made utilizing the proceeds of insurance, as permitted under this Agreement, in order to replace the assets giving rise to such proceeds.

“Capital Lease” shall mean a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP but in any case shall exclude any operating leases that are recharacterized as a Capital Lease in conformity with GAAP after giving effect to the adoption of ASU No. 2016-02 “Leases (Topic 842)” and ASU No. 2018-11 “Leases (Topic 842)”.

“Capital Stock” shall mean (i) in the case of a corporation, capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (iii) in the case of a partnership, partnership interests (whether general or limited), (iv) in the case of a limited liability company, membership interests and (v) any other equity interest or participation that

confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Capitalized Lease Obligation” shall mean any Indebtedness of Parent Guarantor and its applicable Subsidiaries, on a consolidated basis, represented by obligations under Capital Leases.

“Carve-Out” shall have the meaning assigned to such term in the Interim Order or Final Order, as applicable.

“Case” shall have the meaning set forth in the recitals to this Agreement.

“Cash Equivalents” shall have the meaning set forth in Section 7.4 hereof.

“Cash Management Liabilities” shall have the meaning provided in the definition of “Cash Management Products and Services.”

“Cash Management Order” shall mean the order of the Bankruptcy Court entered in the Cases after the “first day” hearings, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to Agent which authorizes, among other things, the Debtors’ continued use of their existing cash management system.

“Cash Management Products and Services” shall mean agreements or other arrangements to provide any of the following products or services to any of any of the Credit Parties: (a) credit cards; (b) credit card processing services; (c) debit cards and stored value cards; (d) purchase cards; (e) ACH transactions; (f) cash management and treasury management services and products, including controlled disbursement accounts or services, lockboxes, automated clearinghouse transactions, overdrafts, interstate depository network services; or (g) foreign currency exchange and foreign currency swaps and hedges. The indebtedness, obligations and liabilities of any Credit Party to the provider of any Cash Management Products and Services that was Agent or a Lender or an Affiliate of Agent or a Lender at the date of entering into such Cash Management Products and Services (including all obligations and liabilities owing to such provider in respect of any returned items deposited with such provider) (the “Cash Management Liabilities”) shall be “Obligations” hereunder and Obligations under the Security Agreement, as applicable, and otherwise treated as Obligations for purposes of each of the Other Documents (other than any Lender-Provided Hedge). The Liens securing the Cash Management Products and Services shall be *pari passu* (without regard to control of remedies) with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5.

“CEA” shall mean the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*

“CFTC” shall mean the Commodity Futures Trading Commission.

“Change in Law” shall mean the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Applicable Law; (b) any change in any Applicable Law or in the administration, implementation, interpretation or application thereof by any Governmental Body; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by any Governmental Body; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of Applicable Law) and (y) all requests, rules, regulations, guidelines, interpretations or directives 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 (whether or not having the force of Law), in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

“Change of Control” shall mean: (a) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) (other than any Permitted Holder) shall have acquired (i) beneficial ownership of 50% or more on a fully diluted basis of the voting or economic Equity Interests of the General Partner in the aggregate, or (ii) the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of the General Partner; (b) the Permitted Holders shall cease to beneficially own and control, directly, at least 10% of the common units representing limited partnership interests in the Parent Guarantor; (c) the General Partner shall cease to be the sole general partner of the Parent Guarantor; (d) (i) the Parent Guarantor shall cease to beneficially own and control, directly, 100% on a fully diluted basis, of the economic and voting interest in the Equity Interests of Emerge or (ii) except as permitted by Section 7.1(a), the Parent Guarantor shall cease to beneficially own and control, directly or indirectly, 100%, on a fully diluted basis, of the economic and voting interest in the Equity Interests of each Borrower (other than Emerge); or (e) a “change of control” (or similarly defined event) as defined in the documentation governing any other Indebtedness of the Parent Guarantor or any of its Subsidiaries of more than \$500,000 in principal amount shall occur.

“CIP Regulations” shall have the meaning set forth in Section 14.11 hereof.

“Closing Date” shall mean July [], 2019.

“Code” shall mean the Internal Revenue Code of 1986.

“Collateral” shall mean and include all right, title and interest of each Credit Party in all of the following property and assets of such Credit Party, in each case whether now existing or hereafter arising or created and whether now owned or hereafter acquired and wherever located:

- (a) all Receivables;
- (b) all Equipment;
- (c) all General Intangibles;
- (d) all Inventory;
- (e) all Investment Property;
- (f) all Subsidiary Stock;
- (g) all Intellectual Property;
- (h) all Real Property that is, or is required to be under the terms of this Agreement, subject to a Mortgage;
- (i) all Leasehold Interests that are, or are required to be under the terms of this Agreement, subject to a Mortgage;
- (j) all Cash and Cash Equivalents;
- (k) all of each Credit Party’s right, title and interest in and to, whether now owned or hereafter acquired and wherever located, (i) its respective goods and other property including, but not

limited to, all merchandise returned or rejected by Customers, relating to or securing any of the Receivables; (ii) all of each Credit Party's rights as a consignor, a consignee, an unpaid vendor, mechanic, artisan, or other lienor, including stoppage in transit, setoff, detinue, replevin, reclamation and repurchase; (iii) all additional amounts due to any Credit Party from any Customer relating to the Receivables; (iv) other property, including warranty claims, relating to any goods securing the Obligations; (v) all of each Credit Party's contract rights, rights of payment which have been earned under a contract right, instruments (including promissory notes), documents, chattel paper (including electronic chattel paper), warehouse receipts, deposit accounts, letters of credit, money, fixtures and as-extracted collateral; (vi) each commercial tort claim described on Schedule 12 to the Perfection Certificate (including those described on any updates to such Schedule delivered with any Compliance Certificate) or in which a security interest is otherwise hereafter granted to Agent by a Credit Party, whether pursuant to the provision of Section 4.1 or otherwise; (vii) if and when obtained by any Credit Party, all real and personal property of third parties in which such Credit Party has been granted a lien or security interest as security for the payment or enforcement of Receivables; (viii) all letter of credit rights (whether or not the respective letter of credit is evidenced by a writing); (ix) all supporting obligations; and (x) any other goods, personal property or real property now owned or hereafter acquired in which any Credit Party has expressly granted a security interest or may in the future grant a security interest to Agent hereunder, or in any amendment or supplement hereto or thereto, or under any other agreement between Agent and any Credit Party;

(l) all of each Credit Party's ledger sheets, ledger cards, files, correspondence, records, books of account, business papers, computers, computer software (owned by any Credit Party or in which it has an interest), computer programs, tapes, disks and documents relating to (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k) above; and

(m) all proceeds and products of (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) or (l) above in whatever form, including, but not limited to: cash, Cash Equivalents, deposit accounts (whether or not comprised solely of proceeds), certificates of deposit, insurance proceeds (including hazard, flood and credit insurance), negotiable instruments and other instruments for the payment of money, chattel paper, security agreements, documents, eminent domain proceeds, condemnation proceeds and tort claim proceeds;

but excluding for all purposes any Excluded Collateral.

“Collection Accounts” shall mean the Concentration Account and each of the deposit accounts listed on Schedule 1.2(b) hereto and each other collection account established at PNC Bank, National Association, or another bank reasonably satisfactory to Agent for the deposit of all proceeds of Collateral of the Credit Parties and any other amounts payable to any Credit Party at any time.

“Commitment” shall mean, as to any Lender, the obligation of such Lender, to make Advances, in an aggregate principal amount not to exceed the Commitment Amount of such Lender.

“Commitment Amount” shall mean as to any Lender, as of the Closing Date, the Commitment Amount set forth across such Lender's name on Schedule 1.2(a) hereto (or, in the case of any Lender that became party to this Agreement after the Closing Date pursuant to Section 16.3(c) or (d) hereof, the Commitment Amount of such Lender as set forth in the applicable Commitment Transfer Supplement), as the same may be adjusted or any assignment by or to such Lender pursuant to Section 16.3(c) or (d) hereof.

“Commitment Percentage” shall mean, as to any Lender, the Commitment Amount of such Lender divided by the Maximum Advance Amount, expressed as a percentage to four (4) decimal places. The initial Commitment Percentage of each Lender as of the Closing Date is set forth across such Lender's name on Schedule 1.2(a) hereto.

“Commitment Transfer Supplement” shall mean a document in the form of Exhibit 16.3 hereto, properly completed and otherwise in form and substance satisfactory to Agent by which the Purchasing Lender purchases and assumes a portion of the obligation of Lenders to make Advances under this Agreement.

“Compliance Certificate” shall mean a compliance certificate substantially in the form attached hereto as Exhibit 1.2(a) to be signed by an Authorized Officer of Parent Guarantor, which (a) shall state that, based on an examination sufficient to permit such officer to make an informed statement, no Default or Event of Default exists, or if such is not the case, shall specify such Default or Event of Default, its nature, when it occurred, whether it is continuing and the steps being taken by the applicable Credit Parties with respect to such default and (b) shall include any updates to Schedule 5.10(b), 5.12 and 5.14 hereto and a supplement to the Perfection Certificate in the form attached as Annex 6.13(b) to the Compliance Certificate (the “Perfection Certificate Supplement”).

“Concentration Account” means the Collection Account, Account No. 8026285688 held at PNC Bank, National Association, or such other Collection Account that may be specified by Agent in writing.

“Connection Income Taxes” shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consents” shall mean all filings and all licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Bodies and other third parties, domestic or foreign, necessary to carry on any Credit Party’s business or necessary (including to avoid a conflict or breach under any agreement, instrument, other document, license, permit or other authorization) for the execution, delivery or performance of this Agreement and the Other Documents, including any Consents required under all applicable federal, state or other Applicable Law.

“Consolidated” or “consolidated” with reference to any term defined herein, shall mean that term as applied to the accounts of Parent Guarantor and all of its consolidated Subsidiaries or its consolidated Restricted Subsidiaries, as indicated in such reference, in each case, consolidated in accordance with GAAP.

“Consolidated EBITDA” shall mean, for any Test Period, for Parent Guarantor and its Restricted Subsidiaries on a consolidated basis, the sum of (a) Consolidated Net Income for such period plus (b) without duplication and to the extent deducted in determining Consolidated Net Income, the sum of (i) depreciation, depletion and amortization for such period, (ii) all Consolidated Interest Expense (net of interest income) for such period, (iii) provision for Taxes based on income for such period, (iv) non-cash charges (including non-cash compensation charges resulting from stock, equity option and related grants or any other long-term incentive arrangement, non-cash impairment charges, non-cash losses as a result of changes in the fair value of derivatives and non-cash charges as a result of Equity Investments and any warrants issued in connection therewith) for such period, (v) any and all expenses associated with remediation actions taken at the Osburn Facility as a result of the temporary cessation of mining operations at mines located at the Osburn Facility, to evaluate and remediate conditions in respect of certain pond berms at said facility, beginning on or around June 21, 2019, including but not limited to labor performed by an employee of any Credit Party, contract labor, contract machine costs, consulting fees, testing, engineering, travel expenses for employees traveling to San Antonio to assist with remediation planning and implementation, materials and professional fees, and (vi) professional fees and expenses paid during such period which were incurred in connection with the Cases, minus (c) to the extent included in determining Consolidated Net Income for such period, Tax benefits for such period.

“Consolidated Net Income” shall mean for any Test Period, the consolidated net income (or loss) of Parent Guarantor and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any such Subsidiary accrued prior to the date it becomes a Restricted Subsidiary of Parent Guarantor or is merged into or consolidated with Parent Guarantor or any of its Restricted Subsidiaries except to the extent included for any calculation of Consolidated EBITDA on a pro forma basis, (b) the net income (or deficit) of any Person (other than a Restricted Subsidiary of Parent

Guarantor) in which Parent Guarantor or any of its Restricted Subsidiaries has an ownership interest, except to the extent that any such income is actually received by Parent Guarantor or such Restricted Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any such Restricted Subsidiary of Parent Guarantor (other than a Credit Party) to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary is at the time prohibited by the terms of any agreement to which such Person is a party or by which it or any of its property is bound, any of such Person's organizational documents or other legal proceedings binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Controlled Group” shall mean, at any time, each Credit Party and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Credit Party, are treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Sections 412 and 430 of the Code and Title IV of ERISA, is treated as a single employer under Sections 414(m) and (o) of the Code.

“Controlled Investment Affiliates” means, with respect to any Person, any fund or investment vehicle that is organized by such Person or an Affiliate of such Person for the purpose of, or in connection with, making investments in one or more companies, and is controlled by such Person or an Affiliate of such Person or has the same principal fund advisor as such Person or an Affiliate of such Person. For purposes of this definition “control” means the power to direct or cause the direction of management and policies of a Person, whether by contract or otherwise.

“Covered Entity” shall mean (a) each Credit Party, each Credit Party's Subsidiaries and each pledgor of Collateral, and (b) to the knowledge of the Credit Parties, each Person which, directly or indirectly, is in control of, a Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the direct or indirect, ownership, or power (x) to vote 25% or more of the Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for any such Person, or (y) the direct or indirect power to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise; provided that no owner of the Equity Interests of the Parent Guarantor shall be deemed to have control of the Parent Guarantor unless such owner is considered to have control of the Parent Guarantor pursuant to clause (y).

“Credit Parties” shall mean the Borrowers and the Guarantors, and “Credit Party” shall mean any of them.

“Cumulative Period” shall mean, *first*, the period from the Petition Date through the Friday of the second full week following the Petition Date, *second*, prior to the San Antonio Operational Date, the two week period ending on the second Friday following the end of the preceding Cumulative Period (a “Two Week Cumulative Period”) and *third* from and after the occurrence of the San Antonio Operational Date, the four-week period ending the fourth Friday following the end of the preceding Cumulative Period (a “Four Week Cumulative Period”).

“Customer” shall mean and include the account debtor with respect to any Receivable and/or the prospective purchaser of goods, services or both with respect to any contract or contract right, and/or any party who enters into or proposes to enter into any contract or other arrangement with any Credit Party, pursuant to which such Credit Party is to deliver any personal property or perform any services.

“Declined Proceeds” shall have the meaning set forth in Section 2.17(c).

“Debtor” shall have the meaning set forth in the recitals to this Agreement.

“Default” shall mean an event, circumstance or condition which, with the giving of notice or passage of time or both, would constitute an Event of Default.

“Default Rate” shall have the meaning set forth in Section 3.1 hereof.

“Defaulting Lender” shall mean any Lender that: (a) has failed, within five Business Days of the date required to be funded or paid, to (i) fund any portion of its Commitment Percentage of Advances or (ii) pay over to the Agent or any Lender any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Agent and the Borrowing Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including a particular Default or Event of Default, if any) has not been satisfied; (b) has notified the Borrowing Agent or the Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including a particular Default or Event of Default, if any) to funding Advances under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within five Business Days after request by the Agent or the Borrowing Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Advances under this Agreement; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Agent’s and Borrowing Agent’s receipt of such certification in form and substance satisfactory to the Agent; (d) has become the subject of an Insolvency Event; or (e) has failed at any time to comply with the provisions of Section 2.10(e) with respect to purchasing participations from the other Lenders, whereby such Lender’s share of any payment received, whether by setoff or otherwise, is in excess of its Pro Rata Share of such payments due and payable to all of the Lenders.

“Deposit Account Control Agreements” shall mean the deposit account control agreements or blocked account agreements in a form that is reasonably satisfactory to the Agent to be executed by each institution maintaining a deposit account or securities account for any of the Credit Parties, in favor of Agent, for the benefit of Secured Parties, as security for the Obligations to the extent required by Section 4.14(g) or any other provision of this Agreement or any Other Document.

“DIP Facility” shall have the meaning set forth in the recitals to this Agreement.

“DIP Superpriority Claims” shall have the meaning set forth in Section 2.18(b) hereof.

“Disclosure Statement” shall mean the disclosure statement for an Approved Chapter 11 Plan, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, including all exhibits and schedules thereto filed by the Debtors with the Bankruptcy Court, as thereafter amended, supplemented, or modified in accordance with applicable law, reasonably acceptable to the Lenders in their sole discretion.

“Disposition” shall have the meaning set forth in Section 7.1(b) hereof.

“Disqualified Stock” shall mean any Equity Interests of a Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, in either case at the option of the holder thereof) or otherwise (a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (b) is or may become redeemable or repurchaseable at the option of the holder thereof, in whole or in part or (c) is convertible or exchangeable at the option of the holder thereof for Indebtedness or Disqualified Stock, on or prior to the earlier of, in the case of clause (a), (b) or (c), (i) 91 days after the Maturity Date hereunder as in effect at the time of issuance and (ii) upon payment in full of the Obligations (provided that only the portion of Equity Interests which is mandatorily redeemable or matures or is redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock), in each case other than in exchange for Equity Interests of the Borrowers (other than Disqualified Stock).

Notwithstanding the preceding sentence:

- (1) any Equity Interests issued to any plan for the benefit of employees of the Credit Parties or any of their Subsidiaries or by any such plan to such employees shall not constitute Disqualified Stock solely because such Equity Interests may be required to be repurchased by the Credit Parties or their Subsidiaries in order to satisfy applicable statutory or regulatory obligations; and
- (2) any Equity Interests held by any future, current or former employee, director, manager or consultant (or their respective trusts, estates, investment funds, investment vehicles or immediate family members) of the Credit Parties or any of their Subsidiaries, in each case upon the termination of employment or death of such person pursuant to any stock option plan or any other management or employee benefit plan or agreement, shall not constitute Disqualified Stock solely because such Equity Interests may be required to be repurchased by the Credit Parties or their Subsidiaries.

“Documents” shall have the meaning set forth in Section 8.1(d) hereof.

“Dollar” and the sign “\$” shall mean lawful money of the United States of America.

“Domestic Rate Loan” shall mean any Advance that bears interest based upon the Alternate Base Rate.

“Domestic Subsidiaries” shall mean, with respect to any Person, any Subsidiary of such Person which is incorporated or organized under the laws of any state of the United States or the District of Columbia other than any such Subsidiary that is owned directly or indirectly by an entity that is not incorporated or organized under the laws of any state of the United States or the District of Columbia.

“EEA Financial Institution” shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” shall mean any member state of the European Union, Iceland, Liechtenstein and Norway or any other state that is a member of the European Economic Area.

“EEA Resolution Authority” shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligibility Date” shall mean, with respect to each Credit Party and each Swap, the date on which this Agreement or any Other Document becomes effective with respect to such Swap (for the avoidance of doubt, the Eligibility Date shall be the date of the execution of such Swap if this Agreement or any Other Document is then in effect with respect to such Credit Party, and otherwise it shall be the date of execution and delivery of this Agreement and/or such Other Document(s) to which such Credit Party is a party).

“Eligible Contract Participant” shall mean an “eligible contract participant” as defined in the CEA and regulations thereunder.

“Emerge” shall have the meaning set forth in the preamble hereto.

“Environmental Complaint” shall have the meaning set forth in Section 4.18(b) hereof.

“Environmental Indemnity Agreements” shall mean any and all environmental indemnity agreements provided by any Credit Party to Agent, for the benefit of the Secured Parties, with respect to Real Property subject to a Mortgage.

“Environmental Laws” shall mean all applicable federal, state and local environmental, land use, chemical use, mining, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment or natural resources governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, legally binding policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto (including, for the avoidance of doubt, the Mine Safety and Health Act, 30 U.S.C. §§ 801 et seq. and the Surface Mining Control and Reclamation Act 30 U.S.C. §§ 1201 et seq).

“Equipment” shall mean and include, as to each Credit Party, all “equipment,” as such term is defined in the Uniform Commercial Code, of such Credit Party, and, in any event, shall include all of such Credit Party’s goods (other than Inventory) whether now owned or hereafter acquired and wherever located, including all equipment, machinery, apparatus, fittings, furniture, furnishings, fixtures, parts, accessories and all replacements and substitutions therefor or accessions thereto.

“Equity Interests” shall mean, with respect to any Person, any and all Capital Stock and all rights to purchase, options, warrants, participation or other equivalents of or interest in (regardless of how designated) equity of such Capital Stock, but excluding debt securities exchangeable for or convertible into Capital Stock. For purposes of the definition of “Change of Control,” Equity Interests include all of the following rights relating to such Equity Interests, whether arising under the Organizational Documents of the Person issuing such Equity Interests (the “issuer”) or under the Applicable Laws of such issuer’s jurisdiction of organization relating to the formation, existence and governance of corporations, limited liability companies or partnerships or business trusts or other legal entities, as the case may be: (i) all economic rights (including all rights to receive dividends and distributions) relating to such Equity Interests; (ii) all voting rights and rights to consent to any particular action(s) by the applicable issuer; (iii) all management rights with respect to such issuer; (iv) in the case of any Equity Interests consisting of a general partner interest in a partnership, all powers and rights as a general partner with respect to the management, operations and control of the business and affairs of the applicable issuer; (v) in the case of any Equity Interests consisting of the membership/limited liability company interests of a managing member in a limited liability company, all powers and rights as a managing member with respect to the management, operations and control of the business and affairs of the applicable issuer; (vi) all rights to designate or appoint or vote for or remove any officers, directors, manager(s), general partner(s) or managing member(s) of such issuer and/or any members of any board of members/managers/partners/directors that may at any time have any rights to manage and direct the business and affairs of the applicable issuer under its Organizational Documents as in effect from time to time or under Applicable Law; (vii) all rights to amend the Organizational Documents of such issuer, (viii) in the case of any Equity Interests in a partnership or limited liability company, the status of the holder of such Equity Interests as a “partner,” general or limited, or “member” (as applicable) under the applicable Organizational Documents and/or Applicable Law; and (ix) all certificates evidencing such Equity Interests, but in any case, excluding debt securities convertible into or exchangeable for Equity Interests.

“Equity Investments” shall mean an issuance of Equity Interests (other than Disqualified Stock) by, or a contribution to the common equity capital of, the Parent Guarantor.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974.

“EU Bail-In Legislation Schedule” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Event of Default” shall have the meaning set forth in Article X hereof.

“Excess Availability” shall mean, as of any date of determination, (a) the Maximum Advance Amount minus (b) the Revolving Facility Usage.

“Exchange Act” shall mean the Securities Exchange Act of 1934.

“Excluded Collateral” shall mean (i) all motor vehicles and other rolling stock and goods covered by a certificate of title, (ii) Excluded Deposit Accounts described in clauses (b) and (c) of the definition thereof, (iii) Equipment owned by any Credit Party that is subject to a Lien permitted pursuant to clause (g) of the definition of “Permitted Encumbrances” (but only to the extent that and only for so long as such Permitted Purchase Money Indebtedness restricts the granting of a Lien therein to Agent), (iv) any lease, license, contract, property right or agreement (or any Credit Party’s rights or interests thereunder) if and to the extent that the grant of the security interest shall constitute or result in (A) the abandonment, invalidation or unenforceability of any right, title or interest of any Credit Party therein, or any legally effective option to purchase or similar right of a third party (other than another Credit Party) thereunder, under any lease, license, contract, or agreement giving rise thereto, or (B) a breach or termination pursuant to the terms of, or a default under, or a violation of any legally enforceable provision requiring consent (which has not been obtained) of another party (other than a Credit Party) to any such lease, license, contract, property right or agreement, (v) any intent-to-use trademark applications for which no statement of use has been filed and (vi) any stock of any Person that does not constitute Subsidiary Stock, to the extent and for so long as the granting of security interests in such stock would be prohibited by an agreement governing such stock, in the case of clauses (iii), (iv) and (vi), after giving effect to applicable anti-non-assignment provisions of the Uniform Commercial Code or any other Applicable Law; provided that the exclusion in such clauses shall not apply to proceeds and receivables of the applicable assets, the assignment of which is expressly deemed effective under the Uniform Commercial Code or other Applicable Law notwithstanding such prohibition.

“Excluded Deposit Accounts” shall mean (a) those deposit accounts identified as “Excluded Deposit Accounts” on Schedule 5(a) to the Perfection Certificate and any other deposit accounts established after the Closing Date, so long as (i) at any time the balance in any such “Excluded Deposit Account” or other deposit account established after the Closing Date does not exceed \$500 and the aggregate balance in all such “Excluded Deposit Accounts” or other deposit accounts established after the Closing Date does not exceed \$2,000 and (ii) such deposit account does not receive remittances from Customers or other proceeds of Receivables and is not an operating account; (b) other deposit accounts established solely as, and containing no funds other than in respect of, payroll, employee benefits, health care reimbursement and other zero balance accounts; and (c) deposit accounts maintained in bank accounts outside of the United States for Foreign Subsidiaries.

“Excluded Hedge Liabilities” shall mean, with respect to each Credit Party, each of its Swap Obligations if, and to the extent that, all or any portion of this Agreement or any Other Document that relates to such Swap Obligation (or the guaranty of such Swap Obligation, or the grant by such Credit Party of a security interest in the Collateral to secure such Swap Obligation) is or becomes illegal under the CEA, or any rule, regulation or order of the CFTC, by virtue of such Credit Party’s failure to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap. Notwithstanding anything to the contrary contained in the foregoing or in any other provision of this Agreement or any Other Document, the foregoing is subject to the following provisos: (a) if a Swap Obligation arises under a master agreement governing more than one Swap, this definition shall only include the portion of such Swap Obligation that is attributable to Swaps for which such guaranty or security interest is or becomes illegal as a result of the failure by such Credit Party for any reason to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap; (b) if a guarantee of a Swap Obligation would cause such obligation to be an Excluded Hedge Liability but the grant of a security interest would not cause such obligation to be an Excluded Hedge Liability, such Swap Obligation shall constitute an Excluded Hedge Liability for purposes of the guaranty but not for purposes of the grant of the security interest; and (c) if there is more than one Credit Party executing this Agreement or the Other Documents and a Swap Obligation would be an Excluded Hedge Liability with respect to one or more of such Persons, but not all of them, the definition of “Excluded Hedge Liabilities” with respect to each such Person shall only be deemed applicable to (i) the particular Swap

Obligations that constitute Excluded Hedge Liabilities with respect to such Person and (ii) the particular Person with respect to which such Swap Obligations constitute Excluded Hedge Liabilities.

“Excluded Taxes” shall mean, with respect to any Recipient, any of the following Taxes imposed on or with respect to any payment to be made to such Recipient by or on account of any Obligations: (a) Taxes imposed on or measured by its net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that are Other Connection Taxes, (b) in the case of any Lender, any U.S. federal withholding Tax that is imposed on amounts payable to or for the account of such Recipient pursuant to a law in effect at the time such Recipient becomes a party hereto (other than pursuant to an assignment request under Section 3.11) or acquires a participation (or designates a new lending office), except, in each case, to the extent that such Recipient (or its assignor or seller of a participation, if any) was entitled, at the time of designation of a new lending office (or assignment or sale of a participation), to receive additional amounts with respect to such withholding Tax pursuant to Section 3.10, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.10(e), or (d) any withholding Taxes imposed under FATCA.

“Extraordinary Receipt” means (a) litigation receipts not received as reimbursements for cash or property losses or payments to third parties previously made or incurred (or reasonably expected to be made or incurred) by Parent Guarantor or any Subsidiary thereof, (b) settlement proceeds to the extent not received as reimbursement for cash losses or payments to third parties previously made or incurred (or reasonably expected to be made or incurred) by Parent Guarantor or any Subsidiary thereof, in the case of clause (a) and (b), net of (x) any income Taxes paid or reasonably expected to be payable in respect of such receipts and (y) costs and expenses incurred in connection with the collection of such receipts, but only to the extent actually paid or payable to a Person that is not an Affiliate of Parent Guarantor or such Subsidiary and properly attributable to such event and (c) any refunds of Taxes paid in the current or any prior fiscal year.

“Fair Market Value” means with respect to any asset or group of assets on any date of determination, the fair market value thereof as determined in good faith by an Authorized Officer or by the board of directors (or similar governing body) of the Parent Guarantor, in each case as such Person has the appropriate authority as permitted by the corporate policies of the Parent Guarantor.

“FATCA” shall mean Sections 1471 through 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, as of the Closing Date (or any amended or successor version as described above), and any applicable intergovernmental agreements entered into with respect thereto (together with any law implementing such agreements).

“Federal Funds Effective Rate” for any day shall mean the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the “Federal Funds Effective Rate” as of the Closing Date; provided that, if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the “Federal Funds Effective Rate” for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced; provided, that, if no such rate is published the Federal Funds Effective Rate for such day shall be the average rate quoted to the Agent on such day on such transactions by three (3) federal funds brokers of recognized standing as determined by the Agent. Notwithstanding anything to the contrary, if the Federal Funds Effective Rate determined pursuant to the foregoing would be less than 0.00% on any day, the Federal Funds Effective Rate shall be deemed to be 0.00% on such day.

“Fee Letter” shall mean the fee letter dated as of the Closing Date among the Parent Guarantor, the Borrowers and the Agent.

“Field Examinations” shall mean, whether as to any one Borrower or all Borrowers and whether in one visit or a series of related visits, the audit, inspection and review by Agent or its agents of any Borrower’s (a) books, records, audits, correspondence and all other papers relating to the Collateral, (b) the operations of such Borrower and/or (c) the Collateral.

“Final Order” shall have the meaning set forth in Section 6.16(e).

“Finance Corp” shall mean Emerge Energy Services Finance Corporation, a Delaware corporation.

“Financial Advisor” means a financial advisor reasonably acceptable to the Agent. For the avoidance of doubt, Houlihan Lokey shall be a reasonably acceptable Financial Advisor.

“First Lien/Second Lien Intercreditor Agreement” shall mean the First Lien/Second Lien Intercreditor Agreement, dated as of the Closing Date, among the Agent and the notes agent and collateral agent under the Second Lien Note Documentation and agreed to and acknowledged by the Credit Parties.

“Flood Laws” shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, (v) Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto, and (vi) any other regulations or requirements that are associated with the National Flood Insurance Program.

“Foreign Lender” shall mean any Lender that is not a “United States person” as defined in Section 7701(a)(30) of the Code.

“Foreign Subsidiary” of any Person shall mean any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

“Fraudulent Transfer Laws” shall have the meaning set forth in Section 15.1(d) hereof.

“GAAP” shall mean generally accepted accounting principles in the United States of America in effect from time to time.

“General Intangibles” shall mean and include as to each Credit Party all of such Credit Party’s “general intangibles,” as such term is defined in the Uniform Commercial Code, whether now owned or hereafter acquired, including all payment intangibles, all choses in action, causes of action, corporate or other business records, inventions, designs, patents, patent applications, equipment formulations, manufacturing procedures, quality control procedures, trade names, trademarks, trademark applications, service marks, trade secrets, goodwill, copyrights, design rights, software, computer information, source codes, codes, records and updates, registrations, licenses, franchises, customer lists, Tax refunds, Tax refund claims, computer programs, all claims under guaranties, security interests or other security held by or granted to such Credit Party to secure payment of any of the Receivables by a Customer (other than to the extent covered by Receivables) all rights of indemnification and all other intangible property of every kind and nature (other than Receivables).

“General Partner” shall mean Emerge Energy Services GP LLC, a Delaware limited liability company.

“Governmental Body” shall mean any nation or government, any state or other political subdivision thereof or any entity, authority, agency, division or department exercising the executive, legislative, judicial,

taxing, regulatory or administrative powers or functions of or pertaining to a government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Guaranteed Obligations” shall have the meaning set forth in Section 17.1 hereof.

“Guarantor” shall mean Parent Guarantor, Finance Corp and each Borrower (other than with respect to its direct Obligations as a primary obligor under this Agreement and the Other Documents) and any other Person who may hereafter guarantee payment or performance of the whole or any part of the Obligations and “Guarantors” shall mean collectively all such Persons.

“Guarantor Payment” shall have the meaning set forth in Section 17.11(a) hereof.

“Hazardous Discharge” shall have the meaning set forth in Section 4.18(b) hereof.

“Hazardous Substance” shall mean, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, Hazardous Wastes, hazardous or Toxic Substances or related materials or any other substance, material or waste defined as “hazardous,” “toxic,” a “pollutant,” a “contaminant” or words of similar meaning or regulatory effect as defined in CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. Sections 5101, *et seq.*), RCRA or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

“Hazardous Wastes” shall mean all waste materials subject to regulation under CERCLA, RCRA or applicable state law, and any other applicable Federal and state laws now in force or hereafter enacted relating to hazardous waste disposal.

“Hedge” shall mean an interest rate, currency or commodity exchange, collar, cap, swap, floor, adjustable strike cap, adjustable strike corridor or similar agreements entered into by any Credit Party in order to provide protection to, or minimize the impact upon, such Credit Party and/or its respective Subsidiaries of changes in interest rates, currency exchange rates or commodity prices; provided that such agreement is entered into for hedging (rather than speculative purposes).

“Hedge Liabilities” shall have the meaning provided in the definition of “Lender-Provided Hedge”.

“Historical Statements” shall have the meaning set forth in Section 5.5(a) hereof.

“HPS” shall have the meaning set forth in the preamble to this Agreement and shall extend to all of its successors and assigns.

“Inactive Subsidiary” shall mean any Subsidiary that does not (a) conduct any business operations (including the operations of a holding company), (b) have any assets or (c) own any Capital Stock of any Credit Party or any other Subsidiary (except another Inactive Subsidiary) of any Credit Party.

“Indebtedness” shall mean, with respect to any Person, as of the date of determination thereof (without duplication), (i) all obligations of such Person for borrowed money, (ii) all obligations evidenced by any note, debenture, bond or other instrument, (iii) all obligations of such Person to pay the deferred purchase price of property or services (other than current unsecured trade accounts payable which arise in the ordinary course of business and that are not overdue more than 120 days unless the same are being Properly Contested), (iv) all Capitalized Lease Obligations, (v) the then outstanding amount of withdrawal or termination liability incurred under ERISA, (vi) all indebtedness created or arising under any conditional sale or other title retention agreement

with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (vii) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right to be secured by) a Lien on any asset of such Person whether or not the Indebtedness is assumed by such Person, provided that for the purpose of determining the amount of Indebtedness of the type described in this clause (vii), if recourse with respect to such Indebtedness is limited to the assets of such Person, then the amount of Indebtedness shall be limited to the Fair Market Value of such assets, (viii) all obligations of such Person in respect of letters of credit, bankers acceptances, surety bonds or similar instruments issued or accepted by banks or other financial institutions for the account of such Person, (ix) any other obligation for borrowed money or other financial accommodation which in accordance with GAAP would be shown as a long-term liability on the consolidated balance sheet of such Person, (x) all obligations of such Person under hedging agreements or arrangements therefor, (xi) all guarantees by such Person of Indebtedness of others, (xii) amounts payable under the Midwest Frac Agreement, (xiii) all obligations in respect of Disqualified Stock and (xiv) all earn-outs (once accrued), seller notes and similar obligations; provided that (x) operating leases shall not be considered Indebtedness, and (y) any Equity Investments and warrants to purchase Equity Interests issued in connection therewith shall not be considered Indebtedness so long as such investment does not constitute Disqualified Stock. For purposes of this definition, the “principal amount” of the obligations of any Person in respect of any hedging agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such hedging agreement were terminated at such time.

“Indemnified Party” shall have the meaning set forth in Section 16.5 hereof.

“Indemnified Taxes” shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or an account of any Obligation of a Credit Party under this Agreement or any Other Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Initial Approved Budget” shall have the meaning set forth in Section 6.11(a).

“Interest Payment Date” shall have the meaning set forth in Section 3.1 hereof.

“Insolvency Event” shall mean, with respect to any Person, including without limitation any Lender, such Person or such Person’s direct or indirect parent company (a) becomes the subject of a bankruptcy or insolvency proceeding (including any proceeding under Title 11 of the United States Code), or regulatory restrictions, (b) has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it or has called a meeting of its creditors, (c) admits in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (d) with respect to a Lender, such Lender is unable to perform hereunder due to the application of Applicable Law, or (e) in the good faith determination of the Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment of a type described in clause (a) or (b), provided that an Insolvency Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person or such Person’s direct or indirect parent company by a Governmental Body or instrumentality thereof if, and only if, such ownership interest does not result in or provide such Person 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 permit such Person (or such Governmental Body or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Intellectual Property” shall mean property constituting under any Applicable Law a patent, patent application, copyright, copyright application, trademark, trademark application, service mark, corporate and trade names, mask work, trade secret or license, in each case whether registered or unregistered, or other right to use any of the foregoing and all goodwill connected with any Credit Party’s business, together with any and all (i) rights and privileges arising under Applicable Law with respect to any Credit Party’s use of any of the foregoing, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions,

continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

“Interest Period” shall mean the period provided for any LIBOR Rate Loan pursuant to Sections 2.1(b) and 2.2(b) hereof.

“Interim Order” shall mean collectively, the order of the Bankruptcy Court entered in the Cases after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), in form and substance satisfactory to the Required Lenders in their sole and absolute discretion, together with all extension, modifications, and amendments thereto, in form and substance satisfactory to Agent, which, among other matters but not by way of limitation, authorizes, on an interim basis, the Credit Parties to execute and perform under the terms of this Agreement and the Other Documents.

“Inventory” shall mean and include as to each Credit Party all “inventory,” as such term is defined in the Uniform Commercial Code, of such Credit Party, and, in any event, shall include all of such Credit Party’s now owned or hereafter acquired goods, merchandise and other personal property, wherever located, to be furnished under any consignment arrangement, contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in such Credit Party’s business or used in selling or furnishing such goods, merchandise and other personal property, and all documents of title or other documents representing them.

“Investment” shall mean, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, guaranty or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, (c) the purchase or other acquisition of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person, or (d) otherwise, other than (i) the acquisition of inventory in the ordinary course of business, including through bulk purchases, (ii) [reserved] and (iii) acquisition or investment in equipment in the ordinary course of business that are Capital Expenditures made in compliance with the Approved Budget. For purposes of covenant compliance, the amount of any Investment shall be (i) the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment minus (ii) the amount of any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash or Cash Equivalents. For the purpose of clarity, a Hedge shall not be considered an Investment.

“Investment Property” shall mean and include as to each Credit Party, all “investment property,” as such term is defined in the Uniform Commercial Code, of such Credit Party, and, in any event, shall include all of such Credit Party’s now owned or hereafter acquired securities (whether certificated or uncertificated), securities entitlements, securities accounts, commodities contracts, commodities accounts and financial assets.

“IRS” shall mean the United States Internal Revenue Service.

“Law(s)” shall mean any law(s) (including common law and equitable principles), federal, state and foreign constitutions, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, judgment, authorization or approval, lien or award of or any settlement arrangement with any Governmental Body or arbitrator, directives and orders of any Governmental Body, in each case, whether, foreign or domestic, state, federal or local.

“Leasehold Interests” shall mean all of each Credit Party’s right, title and interest in and to, and as lessee of, any real property on which any Credit Party conducts mining operations, including, without limitation, the premises identified as Leasehold Interests on Schedule 11(b) to the Perfection Certificate.

“Lender” and “Lenders” shall have the meaning ascribed to such term in the preamble to this Agreement and shall include each Person which becomes a transferee, successor or assign of any Lender. For the purpose of any provision of this Agreement or any Other Document which provides for the granting of a security interest or other Lien to the Agent for the benefit of the Lenders as security for the Obligations, “Lenders” shall include any Affiliate of a Lender to which such Obligation (specifically including any Hedge Liabilities and any Cash Management Liabilities) is owed.

“Lender-Provided Hedge” shall mean a Hedge which at the date of entering into such Hedge was provided by Agent, any Lender or Affiliate of Agent or any Lender and with respect to which Agent confirms meets the following requirements: such Hedge (i) is documented in a standard International Swap Dealer Association Agreement or other customary agreement reasonably satisfactory to Agent, (ii) provides for the method of calculating the reimbursable amount of the provider’s credit exposure in a reasonable and customary manner, and (iii) is entered into for hedging (rather than speculative) purposes. The indebtedness, obligations and liabilities to the provider of any Lender-Provided Hedge that was Agent or a Lender or an Affiliate of Agent or a Lender at the date of entering into such Lender-Provided Hedge (the “Hedge Liabilities”) of the Credit Party or Subsidiary thereof that is party to such Lender-Provided Hedge shall, for purposes of this Agreement and all Other Documents be “Obligations” of such Person and of each other Credit Party except to the extent constituting Excluded Hedge Liabilities of such Person (subject to the final sentence of the definition of “Excluded Hedge Liabilities”). The Liens securing the Hedge Liabilities shall be *pari passu* (without regard to control of remedies) with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5 hereof.

“LIBOR Rate” shall mean for any LIBOR Rate Loan for the then current Interest Period relating thereto, the interest rate per annum determined by Agent by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (i) the rate which appears on the applicable Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which US dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by Agent as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (an “Alternate Source”), at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such LIBOR Rate Loan and having a borrowing date and a maturity comparable to such Interest Period (or if there shall at any time, for any reason, no longer exist a Bloomberg Page (or any substitute page) or any Alternate Source, the LIBOR Rate shall be determined by reference to the rate at which dollar deposits for a maturity comparable to such Interest Period are offered by three major banking institutions in immediately available funds in the London interbank market as of the 11:00 a.m., London time, two (2) Business Days, if such rates are no longer available a comparable replacement rate determined by Agent at such time (which determination shall be conclusive absent manifest error)), by (ii) a number equal to 1.00 minus the Reserve Percentage. The LIBOR Rate may also be expressed by the following formula:

$$\text{LIBOR Rate} = \frac{\text{Average of London interbank offered rates quoted by Bloomberg or appropriate successor as shown on Bloomberg Page BBAM1 or appropriate substitute Bloomberg page or Alternate Source}}{1.00 - \text{Reserve Percentage}}$$

The LIBOR Rate shall be adjusted with respect to any LIBOR Rate Loan that is outstanding on the effective date of any change in the Reserve Percentage as of such effective date. Agent shall give prompt notice to the Borrowing Agent of the LIBOR Rate as determined or adjusted in accordance herewith, which

determination shall be conclusive absent manifest error. Notwithstanding anything to the contrary, the LIBOR Rate shall not be less than 2.00% for any period.

“LIBOR Rate Loan” shall mean an Advance at any time that bears interest based on the LIBOR Rate.

“Lien” shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien (whether statutory or otherwise), tax, claim or encumbrance, or preference, priority or other security agreement or preferential arrangement held or asserted in respect of any asset of any kind or nature whatsoever including any conditional sale or other title retention agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction.

“Liquidity” shall mean the sum of (a) Excess Availability plus (b) Unrestricted Cash.

“Loan Guaranty” means Article XVII of this Agreement, as it may be amended or modified and in effect from time to time.

“Material Adverse Effect” shall mean a material adverse effect on (a) the financial condition, operations, assets, business or liabilities of the Credit Parties taken as a whole, (b) any Credit Party’s ability to perform its non-monetary Obligations in accordance with the terms of this Agreement or the Other Documents (as applicable) or the ability of the Credit Parties taken as a whole to pay or perform the Obligations in accordance with the terms of this Agreement or the Other Documents (as applicable), (c) the value of a material portion of the Collateral, or Agent’s Liens on a material portion of the Collateral or the priority of any such Lien or (d) Agent’s and each Lender’s rights and remedies under this Agreement and the Other Documents provided that, solely for the purposes of Section 5.5(c), the occurrence of the San Antonio Shutdown (but excluding any event or development resulting, directly or indirectly, from the San Antonio Shutdown) shall not itself be deemed to constitute a Material Adverse Effect.

“Material Contract” shall mean (a) any agreement, document, instrument, contract or other arrangement to which a Credit Party or any of its Restricted Subsidiaries is a party (other than this Agreement and the Other Documents (i) which accounts for more than 10.0% of the consolidated gross revenues of the Parent Guarantor and its Subsidiaries, (ii) that is a “material contract” as defined in Item 601(b)(10) of Regulation S-K of the Securities Exchange Act of 1934, as amended or (iii) for which the nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect), or (b) the Design/Build Contract dated December 2017 between SSS and Market & Johnson, Inc. with respect to the Phase III expansion of the Osburn Facility dry plant and the Design/Build Contract to be entered into between SSS and a counterparty to be determined with respect to the Phase III expansion of the Osburn Facility wet plant.

“Maturity Date” shall mean the earliest to occur of (i) the six month anniversary of the Closing Date, (ii) the date any Debtor enters into (or files a motion with the Bankruptcy Court or otherwise takes action to seek the Bankruptcy Court’s approval of) any agreement for the sale or transfer of all or any material portion of the Debtors’ assets unless such agreement and any related orders proposed to be entered by the Bankruptcy Court provide for the indefeasible payment in full of the Obligations on or prior to the closing of such proposed sale or transfer; (iii) the date which is the closing date of any sale or transfer of all or any material portion of the Debtors’ assets, other than sales or transfers of Inventory in the ordinary course of business; (iv) the filing or support by any Debtor of a Chapter 11 plan that (x) does not provide for indefeasible payment in full of the Obligations and (y) is not otherwise acceptable to the Required Lenders; (v) the effective date of a Chapter 11 plan of reorganization or liquidation filed in any of the Cases that is confirmed pursuant to an order entered by the Bankruptcy Court; (vi) the 30th day after the entry of the Interim Order by the Bankruptcy Court, if the Final Order shall not have been entered by the Bankruptcy Court on or prior to such date; (vii) the date the Bankruptcy Court orders any Case be converted to a case filed under Chapter 7 of the Bankruptcy Court or the dismissal of the Case of any Debtor; (viii) the date of termination of the Lenders’ Commitments and the acceleration of the Advances, in each case, under the DIP Facility in accordance with the terms of this Agreement and the Other Documents (including, without limitation, as a result of the occurrence of an Event of Default or any default

under the Interim Order or the Final Order); or (ix) the termination of the Restructuring Agreement by the Debtors or the Consenting Creditors (as defined therein).

“Maximum Advance Amount” shall mean \$35,000,000.

“Midwest Frac Agreement” shall mean that certain Agreement of Purchase and Sale dated as of May 29, 2014 between Midwest Frac and Sands LLC, as Seller, and SSS, as purchaser, as amended by the First Amendment to Agreement of Purchase and Sale dated as of July 7, 2014, as amended from time to time.

“Milestone” shall have the meaning set forth in Section 6.16 hereof.

“Modified Commitment Transfer Supplement” shall have the meaning set forth in Section 16.3(d) hereof.

“Mortgages” shall mean any and all mortgages or deeds of trust on any of the Real Property securing the Obligations.

“Multiemployer Plan” shall mean a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA to which contributions are required or, within the preceding five plan years, were required, by any Credit Party or any member of the Controlled Group.

“Multiple Employer Plan” shall mean a Plan which has two or more contributing sponsors (including any Credit Party or any member of the Controlled Group) at least two of whom are not under common control, as such a plan is described in Section 4063 or 4064 of ERISA.

“Net Cash Proceeds” shall mean, with respect to any event described in Section 2.17, proceeds received by any Credit Party or any Restricted Subsidiary from or in respect of such event, less (i) any foreign, federal, state or local income Taxes paid or payable in respect of such event, (ii) any customary and reasonable transaction fees and expenses incurred in connection with such event (including financial advisory fees, legal fees and accountants’ fees), and (iii) the amount of any reasonable reserve established in accordance with GAAP against any liabilities associated with the assets that are the subject of such event and retained by any Credit Party or any Restricted Subsidiary thereof.

“Non-Bank Tax Certificate” shall have the meaning set forth in Section 3.10(e) hereof.

“Non-Qualifying Party” shall mean any Credit Party that fails for any reason to qualify as an Eligible Contract Participant.

“Note” shall mean the Revolving Credit Note.

“Obligated Party” shall have the meaning set forth in Section 17.2 hereof.

“Obligations” shall mean and include (a) any and all loans (including without limitation, all Advances), advances, debts, liabilities, obligations, covenants and duties owing by any Credit Party to any Secured Party of any kind or nature, present or future (including any interest or other amounts accruing thereon, any fees accruing under or in connection therewith, any costs and expenses of any Person payable by any Credit Party under the terms of this Agreement or any Other Document and any indemnification obligations payable by any Credit Party arising or payable after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to any Credit Party, whether or not a claim for post-filing or post-petition interest, fees or other amounts is allowable or allowed in such proceeding), whether or not for the payment of money, whether arising by reason of an extension of credit, opening or issuance of a letter of credit, loan, establishment of any purchase card or similar facility or guarantee, under any interest or currency swap, future, option or other similar agreement, or in any other manner, whether arising out of overdrafts or

deposit or other accounts or electronic funds transfers (whether through automated clearing houses or otherwise) or out of the Agent's or any Lender's non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository transfer check or other similar arrangements, whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, regardless of how such indebtedness or liabilities arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument, in any such case to the extent advanced to or owing by any Credit Party or any Subsidiary of any Credit Party under, in each case, arising under or out of and/or related to (i) this Agreement, the Other Documents and any amendments, extensions, renewals or increases thereto, including, subject to Section 16.9, all costs and expenses of Agent and any Lender incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing (including but not limited to reasonable attorneys' fees and expenses) and all obligations of any Credit Party to Agent or Lenders to perform acts or refrain from taking any action and (b) all Hedge Liabilities and all Cash Management Liabilities. Notwithstanding anything to the contrary contained in the foregoing (but subject to the final sentence of the definition of "Excluded Hedge Liabilities"), as to each Credit Party, the Obligations shall not include any Excluded Hedge Liabilities of such Person.

"Order" shall have the meaning set forth in Section 6.16(d).

"Organizational Documents" shall mean (i) with respect to any corporation, its certificate or articles of incorporation or organization and its by-laws, (ii) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (iii) with respect to any general partnership, its partnership agreement and (iv) with respect to any limited liability company, its articles of organization and its operating agreement. In the event any term or condition of this Agreement or any Other Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Osburn Acquisition" shall mean the acquisition of the assets of Osburn Materials, Inc. pursuant to the Osburn Acquisition Agreement.

"Osburn Acquisition Agreement" means that certain Asset Purchase Agreement dated as of April 12, 2017 by and among Materials Holding Company, Inc., a Texas corporation, Osburn Materials, Inc., a Texas corporation, Osburn Sand Co., a Texas corporation, South Lehr, Inc., a Texas corporation, Clay M. Tooke, an individual, and SSS.

"Osburn Facility" shall mean the Real Property acquired pursuant to the Osburn Acquisition.

"Other Connection Taxes" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between it and the jurisdiction imposing such Tax (other than connections arising from it 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 this Agreement or any Other Document, or sold or assigned an interest in its Commitment or any Advances, this Agreement or any Other Document).

"Other Documents" shall mean the Notes, the First Lien/Second Lien Intercreditor Agreement, the Security Agreement, any and all other agreements, instruments, certificates, statements and documents, including any acknowledgment and waivers, intercreditor agreements, guaranties, pledges, powers of attorney, consents, interest or currency swap agreements or other similar agreements and all other writings heretofore, now or hereafter executed or provided by any Credit Party and/or delivered to Agent or any Lender in respect of the transactions contemplated by this Agreement.

“Other Taxes” shall mean all present or future stamp, court or documentary, intangible, recording or filing Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or under any Other Document or from the execution, delivery, registration or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any Other Document, but excluding any and all such Taxes that are Other Connection Taxes imposed with respect to any assignment (other than an assignment made pursuant to Section 3.11) by any Recipient of an interest in its Commitment or any Advances, this Agreement or any Other Document.

“Parent Guarantor” shall have the meaning set forth in the preamble hereto.

“Participant” shall mean each Person who pursuant to Section 16.3(b) shall be granted the right by any Lender to participate in any of the Advances and who shall have entered into a participation agreement in form and substance satisfactory to such Lender.

“Participant Register” shall have the meaning set forth in Section 16.3(b) hereof.

“Partnership Agreement” shall mean that certain First Amended and Restated Agreement of Limited Partnership of Parent Guarantor, dated May 14, 2013 as amended by that certain Amendment No. 1 to the First Amended and Restated Agreement of Limited Partnership of Parent Guarantor.

“Payment Office” shall mean such office or account of Agent, if any, which it may designate by notice to Borrowing Agent and to each Lender to be the Payment Office.

“PBGC” shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

“Pension Benefit Plan” shall mean at any time any employee pension benefit plan (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained or to which contributions are required by any member of the Controlled Group; or (ii) has at any time within the preceding five years been maintained or to which contributions have been required by any entity which was at such time a member of the Controlled Group.

“Perfection Certificate” shall mean collectively, the Perfection Certificate and the responses thereto provided by each Credit Party and delivered to Agent on the Closing Date (as defined in the Pre-Petition Credit Agreement), as amended or supplemented by each Perfection Certificate Supplement.

“Perfection Certificate Supplement” shall have the meaning set forth in the definition of “Compliance Certificate.”

“Period” shall mean a Prior Week or a Cumulative Period, as applicable.

“Permitted Acquisition” shall mean any Acquisition by a Credit Party which is consented to by Agent and the Required Lenders.

“Permitted Discretion” shall mean, a determination made by Agent in good faith in the exercise of its reasonable business judgment based on how a lender with similar rights providing a secured credit facility of the type set forth herein would act, in the circumstances then applicable to the Credit Parties at the time with the information then available to it.

“Permitted Encumbrances” shall mean (a) Liens in favor of Agent for the benefit of Agent and the other Secured Parties; (b) Liens for Taxes, assessments or other governmental charges which are not delinquent or are being Properly Contested; (c) deposits or pledges to secure obligations under worker’s compensation, social

security or similar laws, or under unemployment insurance, in each case in the ordinary course of business and under operation of law; (d) deposits or pledges to secure bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising, in each case, either (i) with prior written approval of the Required Lenders or (ii) to the extent contemplated by the Approved Budget (including permitted variances therefrom); (e) Liens arising by virtue of the rendition, entry or issuance against any Credit Party or any Subsidiary, or any property of any Credit Party or any Subsidiary, of any judgment, writ, order, or decree which have been in force for less than the applicable period for taking an appeal so long as execution is not levied thereunder or in respect of which the Credit Parties shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review; (f) mechanics', workers', materialmen's, carrier's, repairmen's or other like Liens arising in the ordinary course of business with respect to obligations which are not yet due and payable or which are being Properly Contested; (g) Liens securing Capitalized Lease Obligations permitted by Section 7.6(b) or Permitted Purchase Money Indebtedness, provided that (i) such Liens were created substantially simultaneously with the acquisition of the asset financed with such Indebtedness (or substantially simultaneously with the incurrence of the Capitalized Lease Obligation or Permitted Purchase Money Indebtedness, if later), (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (iii) the principal amount of Indebtedness secured by any such Lien shall at no time exceed 100% of the original purchase price of such property and, in each case, either (x) with prior written approval of the Required Lenders or (y) to the extent contemplated by the Approved Budget (including permitted variances therefrom); (h) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto incurred in the ordinary course of business; (i) Liens disclosed on Schedule 1.2(c), provided that such Liens shall secure only those obligations which they secure on the Closing Date (and any Permitted Refinancing in respect thereof, either (x) subject to prior written approval of the Required Lenders or (y) to the extent contemplated by the Approved Budget (including permitted variances therefrom)) and shall not subsequently apply to any other property or assets of any Credit Party, (j) Liens on Real Property (i) which is subject to a Mortgage as of the Closing Date and which are disclosed on any title commitments and surveys provided to Agent with respect to such Mortgage, (ii) which consist of easements, rights-of-way, covenants, zoning, building, and land-use laws, rules and restrictions, or other restrictions on the use of real property which do not (individually or in the aggregate) materially affect the value of the assets encumbered thereby or materially impair the ability of any Credit Party to use such assets in its business, and none of which is violated in any material aspect by existing or proposed structures or land use or (iii) in favor of Dairy State Bank to secure an aggregate principal amount not greater than \$135,000, (k) statutory Liens in favor of landlords, warehousemen, processors and bailees arising in the ordinary course of business, (l) Prior Permitted Liens, (m) licenses or sublicenses of patents, trademarks and other intellectual property rights granted by any Credit Party or any of its Subsidiaries prior to the Petition Date in the ordinary course of business and not (i) interfering in any respect with the ordinary course of business of such Credit Party or Subsidiary or (ii) securing Indebtedness, (n) Liens arising from precautionary UCC financing statements or similar filings made in respect of operating leases, bailment arrangements and consignment arrangements entered into by any Credit Party and not prohibited by this Agreement or any Other Document, (o) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law, (p) the Adequate Protection Liens and Adequate Protection Superpriority Claims, (q) Liens to renew, extend, refinance or refund a Lien referred to in clause (g) above; provided that (i) such new Lien shall be limited to all or part of the same property (including future improvements thereon and accessions thereto) subject to the original Lien, (ii) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the amount necessary to effect a Permitted Refinancing of such Indebtedness and (iii) such renewal, extension, refinancing or refund is either (x) granted prior written approval of the Required Lenders or (y) to the extent contemplated by the Approved Budget (including permitted variances therefrom), (r) Liens securing the Prior Lender Obligations, (s) Liens created under this Agreement or any Other Document and (t) Liens on Collateral securing Permitted Second Lien Notes thereof.

“Permitted Holders” shall mean any of (a) Insight Equity I LP, Insight Equity (Tax-Exempt) I LP, Insight Equity (Cayman) I LP, Insight Equity (Affiliated Coinvestors) I LP, and/or (b) any of their Controlled Investment Affiliates.

“Permitted Purchase Money Indebtedness” shall mean Purchase Money Indebtedness of any Credit Party or any Subsidiary thereof which is incurred after the Closing Date and which is secured by no Lien or only by a Lien permitted by clause (g) of the definition of “Permitted Encumbrance” as defined herein; provided that such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed.

“Permitted Refinancing” shall mean Indebtedness incurred to Refinance other Indebtedness; provided that (i) the principal amount (or accreted value, if applicable) of the Permitted Refinancing shall not exceed the sum of the principal amount (or accreted value, if applicable) of the Indebtedness being Refinanced plus accrued and unpaid interest thereon, any stated premium thereon due upon such Refinancing pursuant to the terms of the documentation governing such Indebtedness and fees and expenses reasonably incurred in connection with such Refinancing, (ii) the terms and conditions of any such Permitted Refinancing, taken as a whole, shall not be materially more restrictive on the Credit Parties than the Indebtedness being Refinanced, (iii) the Permitted Refinancing shall not be guaranteed by any Person that is not a guarantor of, or be secured by any assets that are not securing, the Indebtedness being Refinanced, (iv) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations, such Permitted Refinancing shall be subordinated in right of payment to the Obligations on terms taken as a whole at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced, and (v) except with respect to Indebtedness incurred pursuant to Sections 7.6(b) and (c), such Permitted Refinancing shall have (A) a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced, and (B) an Average Life at the time such Permitted Refinancing is incurred that is equal to or greater than the Average Life of the Indebtedness being Refinanced.

“Permitted Second Lien Notes” shall mean notes issued pursuant to the Second Lien Note Documentation; provided that (i) the aggregate principal amount of such notes shall not exceed the Junior Lien Obligations Cap (as defined in the First Lien/Second Lien Intercreditor Agreement), (ii) [reserved], (iii) the obligors in respect thereof shall not include any Person other than a Borrower or a Guarantor, (iv) such notes shall not be secured by any asset that is not Collateral, (v) such notes shall be subject to the First Lien/Second Lien Intercreditor Agreement and (vi) the Second Lien Note Documentation shall not require any payments in respect of such notes prior to January 5, 2023.

“Person” shall mean any individual, sole proprietorship, partnership, corporation, business trust, joint stock company, trust, unincorporated organization, association, limited liability company, limited liability partnership, institution, public benefit corporation, joint venture, entity or Governmental Body (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

“Petition Date” shall have the meaning set forth in the recitals to this Agreement.

“Plan” shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA which is a Pension Benefit Plan, a Multiemployer Plan or a Welfare Plan (as defined in Section 3(2) of ERISA) which provides self-insured benefits and which is maintained by any Credit Party or any member of the Controlled Group or to which any Credit Party or any member of the Controlled Group is required to contribute.

“Post-Petition” shall mean the time period commencing immediately upon the filing of the Cases on the Petition Date.

“PPSA” shall mean the *Personal Property Security Act* (Alberta) or similar personal property security legislation as in effect from time to time in any province or territory of Canada applicable to any Collateral. References to sections of the PPSA shall be construed to also refer to any successor sections.

“Pre-Petition Credit Agreement” shall mean that certain Second Amended and Restated Revolving Credit and Security Agreement, dated as of January 5, 2018 (as amended, supplemented and otherwise modified from time to time prior to the Closing Date), by and among the Borrowers, Parent Guarantor, the Prior Lenders,

and the applicable Prior Agent, as agent for the lenders, providing for a \$75,000,000 revolving credit facility to the Borrowers.

“Pre-Petition Indebtedness” shall mean all Indebtedness of any of the Credit Parties outstanding on the Petition Date immediately prior to the filing of the Cases other than Indebtedness under (i) the Pre-Petition Credit Agreement and (ii) the Second Lien Note Documentation.

“Pre-Petition Liens” shall mean the Liens securing the Prior Lender Obligations.

“Pre-Petition Loan” shall mean (i) all “Advances” as such term is defined in the Pre-Petition Credit Agreement and (ii) all “Notes” as such term is defined in the Second Lien Note Purchase Agreement, as the case may be.

“Pre-Petition Loan Documents” shall mean the “Agreement” and the “Other Documents” as such terms are defined in the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement, as the case may be.

“Prime Rate” shall mean for any day, the rate of interest in effect for such day as published in the “Money Rates” section of The Wall Street Journal as being the “Prime Rate” (or, if more than one rate is published as the Prime Rate, then the highest of such rates). The Prime Rate will change as of the date of publication in The Wall Street Journal of a Prime Rate that is different from that published on the preceding Business Day. In the event that The Wall Street Journal shall, for any reason, fail or cease to publish the Prime Rate, the Agent shall choose a reasonable comparable index or source to use as the basis for the Prime Rate with the consent of the Borrower (not to be unreasonably withheld or delayed).

“Prior Agent” shall mean (i) HPS (as successor to PNC Bank, National Association on and from March 15, 2019), as administrative agent and collateral agent under the Pre-Petition Credit Agreement and (ii) HPS, as notes agent and collateral agent under the Second Lien Note Purchase Agreement, as the case may be.

“Prior Lender Obligations” shall mean all “Obligations” under, and as defined in, the Pre-Petition Credit Agreement and/or the Second Lien Note Purchase Agreement, as applicable, of any Credit Party and any of their Subsidiaries to the Secured Parties (under, and as defined in, the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement, as applicable) pursuant to the Pre-Petition Credit Agreement and/or the Second Lien Note Purchase Agreement, as applicable and all instruments and documents executed pursuant thereto or in connection therewith.

“Prior Lenders” means (i) the lenders under the Pre-Petition Credit Agreement and (ii) the noteholders under the Second Lien Note Purchase Agreement, as the case may be.

“Prior Permitted Liens” shall mean (i) valid, perfected, and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date and senior in priority to the liens and security interests securing the Prepetition Facilities as of the Closing Date, (ii) to valid, perfected, and unavoidable Liens in favor of third parties that were in existence immediately prior to the Petition Date that were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, subject as to priority to such Liens in favor of such third parties, and (iii) other Liens and encumbrances that are senior in priority by operation of Law to the Liens and security interests securing the DIP Facility.

“Prior Week” shall mean, as of any date of determination, the immediately preceding week ended on a Saturday and commencing on the prior Sunday.

“Pro Rata Share” shall have the meaning set forth in Section 16.19(h) hereof.

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

“Published Rate” shall mean the rate of interest published each Business Day in the Wall Street Journal “Money Rates” listing under the caption “London Interbank Offered Rates” for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the rate at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market for a one month period as published in another publication selected by Agent).

“Purchase Money Indebtedness” shall mean and include (i) Indebtedness (other than the Obligations) of any Credit Party or Subsidiary thereof for the payment of all or any part of the purchase price of any Equipment, real property or other fixed assets, (ii) any Indebtedness (other than the Obligations) of any Borrower incurred at the time of or within thirty (30) days prior to or thirty (30) days after the acquisition of any Equipment, real property or other fixed assets for the purpose of financing all or any part of the purchase price thereof (whether by means of a loan agreement, capitalized lease or otherwise), and (iii) any Permitted Refinancing thereof outstanding at the time, in each case of the foregoing, incurred in the ordinary course of business.

“Purchasing CLO” shall have the meaning set forth in Section 16.3(d) hereof.

“Purchasing Lender” shall have the meaning set forth in Section 16.3(c) hereof.

“Qualified ECP Credit Party” shall mean each Credit Party that (a) has total assets exceeding \$10,000,000 on the Eligibility Date, or (b) such other Person as is qualified to give a “letter of credit or keepwell, support, or other agreement” for purposes of Section 1a(18)(A)(v)(II) of the CEA.

“Railcar Lease and Transload Facilities” shall mean an operating lease of railcars or with respect to transloading facilities in the ordinary course of business of the Borrowers, including any such operating lease of railcars that is recharacterized as a Capital Lease in conformity with GAAP after giving effect to the adoption of ASU No. 2016-02 “Leases (Topic 842)” and ASU No. 2018-11 “Leases (Topic 842)”.

“RCRA” shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, as same may be amended from time to time.

“Real Property” shall mean all real property (including fixtures and improvements thereon) owned or leased by any Credit Party.

“Receivables” shall mean and include, as to each Credit Party, all of such Credit Party’s accounts, contract rights, instruments (including those evidencing indebtedness owed to such Credit Party by its Affiliates), documents, chattel paper (including electronic chattel paper), general intangibles relating to accounts, drafts and acceptances, credit card receivables and all other forms of obligations owing to such Credit Party arising out of

or in connection with the sale or lease of Inventory or the rendition of services, all supporting obligations, guarantees and other security therefor, whether secured or unsecured, now existing or hereafter created, and whether or not specifically sold or assigned to Agent hereunder.

“Recipient” shall mean the Agent or any Lender.

“Refinance” shall mean, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, replace, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. “Refinanced” and “Refinancing” shall have correlative meanings.

“Register” shall have the meaning set forth in Section 16.3(e) hereof.

“Release” shall have the meaning set forth in Section 5.7(c)(i) hereof.

“Replacement Notice” shall have the meaning set forth in Section 3.11 hereof.

“Reportable Compliance Event” shall mean that any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual violation of any Anti-Terrorism Law.

“Reportable Event” shall mean a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder (other than an event for which the 30-day notice period has been waived by regulation).

“Required Lenders” shall mean Lenders holding fifty-one percent (51%) or more of either (a) the aggregate of the Commitment Amounts of all Lenders (excluding any Defaulting Lender), or (b) after the termination of all Commitments of the Lenders hereunder, the outstanding Advances excluding such Obligations held by a Defaulting Lender.

“Reserve Percentage” shall mean as of any day the maximum percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding.

“Restricted Payment” shall have the meaning set forth in Section 7.5.

“Restricted Subsidiaries” shall mean each Subsidiary of the Parent Guarantor.

“Restructuring Advisor” means a financial advisor reasonably acceptable to the Agent. For the avoidance of doubt, Ankura shall be a reasonably acceptable Restructuring Advisor.

“Restructuring Agreement” shall mean that certain Restructuring Support Agreement dated as of April 18, 2019 by and among the Debtors, certain direct and indirect equity holders the General Partner, the Prior Agent and the Prior Lenders.

“Revolving Credit Note” shall mean, collectively, the promissory notes referred to in Section 2.1 hereof.

“Revolving Exposure” shall mean, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Advances (other than any Roll-Up Loans), at such time.

“Revolving Facility Usage” shall mean at any time the sum of the outstanding Advances (other than the Roll-Up Loans).

“Revolving Interest Rate” shall mean, (a) with respect to Domestic Rate Loans, an interest rate per annum equal to the sum of the Applicable Margin for Domestic Rate Loans plus the Alternate Base Rate and (b) with respect to LIBOR Rate Loans, the sum of the Applicable Margin for LIBOR Rate Loans plus the LIBOR Rate.

“Roll-Up Date” shall have the meaning set forth in Section 2.1(b).

“Roll-Up Loan” shall have the meaning set forth in Section 2.1(b).

“San Antonio Operational Date” means the date upon which the Credit Parties have resumed mining operations at the A and B mines located at the Osburn Facility.

“San Antonio A and B Mine Shutdown” means the temporary cessation of mining operations at the A and B mines located at the Osburn Facility, to evaluate and remediate conditions in respect of certain pond berms at said facility, beginning on or around June 21, 2019, and ending on the San Antonio Operational Date.

“Sanctioned Country” shall mean a country subject to a sanctions program maintained under any Anti-Terrorism Law.

“Sanctioned Person” shall mean any Person, group, regime, entity or thing (a) listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred Person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any Anti-Terrorism Law, (b) located, organized or resident in a Sanctioned Country, or (c) owned or controlled by any Person or Persons referenced in the foregoing clause (a) or (b).

“SEC” shall mean the Securities and Exchange Commission or any successor thereto.

“Second Lien Note Documentation” shall mean (i) the Second Lien Note Purchase Agreement, dated as of January 5, 2018, among the Credit Parties, HPS Investment Partners, LLC, as notes agent and collateral agent, and the lenders from time to time party thereto and (ii) the “Other Documents” as defined in the agreement referred to in clause (i), in each case, as amended, supplemented or otherwise modified from time to time.

“Secured Parties” shall mean, collectively, Agent and Lenders, together with any Person to whom any Hedge Liabilities or Cash Management Liabilities are owed and each other holder of any of the Obligations, and the respective successors and assigns of each of them.

“Securities Act” shall mean the Securities Act of 1933.

“Security Agreement” shall mean the provisions of Article IV hereof.

“Specified Documents” shall have the meaning set forth on Schedule 1.2(d) hereto.

“Specified Leases” shall have the meaning set forth on Schedule 1.2(d) hereto.

“Specified Note” shall have the meaning set forth on Schedule 1.2(d) hereto.

“SSS” shall have the meaning set forth in the preamble hereto.

“Stated Maturity” shall mean, with respect to any security or other Indebtedness, the date specified in such security or the documents governing such Indebtedness as the fixed date on which the final payment of

principal of such security or other Indebtedness is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security or other Indebtedness at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

“Subsidiary” of any Person shall mean a corporation or other entity whose Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the directors of such corporation, or other Persons performing similar functions for such entity, are owned, directly or indirectly, by such Person.

“Subsidiary Stock” shall mean:

(a) all of the issued and outstanding Equity Interests of each issuer at any time owned or otherwise acquired by any Credit Party, in each case together with the certificates (or other agreements or instruments), if any, representing such Equity Interests, and all options and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following; provided that, in the case of any issuer that is a Foreign Subsidiary of a Credit Party, and only to the extent a pledge in excess of 65% would result in material adverse tax consequences, such Equity Interests shall be limited to sixty-five percent (65%) of each class of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and one hundred percent (100%) of each class of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) (“Non-Voting Equity”) of each such Foreign Subsidiary of a Credit Party (but only to the extent that the pledge of such Non-Voting Equity would not cause the Obligations to be treated as “United States property” of such Foreign Subsidiary within the meaning of Treas. Reg. Section 1.956-2) (collectively, the “Pledged Capital Stock”):

(x) subject to the percentage restrictions described above, all shares, securities, membership interests or other equity interests representing a dividend on any of the Pledged Capital Stock, or representing a distribution or return of capital upon or in respect of the Pledged Capital Stock, or resulting from a stock split, revision, reclassification or other exchange therefor, and any subscriptions, warrants, rights or options issued to the holder of, or otherwise in respect of, the Pledged Capital Stock; and

(y) without affecting the obligations of the Credit Parties under any provision prohibiting such action hereunder, in the event of any consolidation or merger involving the issuer of any Pledged Capital Stock and in which such issuer is not the surviving entity, all shares of each class of the Equity Interests of the successor entity formed by or resulting from such consolidation or merger;

(b) subject to the percentage restrictions described above, any and all other Equity Interests owned by any Credit Party in any Domestic Subsidiary or any Foreign Subsidiary; and

(c) all proceeds and products of the foregoing, however and whenever acquired and in whatever form.

“Successor Case” means, with respect to the Cases, any subsequent proceedings under the Bankruptcy Code, including any proceedings under Chapter 7 of the Bankruptcy Code.

“Swap” shall mean any “swap” as defined in Section 1a(47) of the CEA and regulations thereunder, other than (a) a swap entered into, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA, or (b) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

“Swap Obligation” shall mean any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap which is also a Lender-Provided Hedge.

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

“Termination Date” shall mean the date on which (a) all of the Obligations (excluding contingent indemnification obligations with respect to which no claims have been made) have been paid in full in cash and (b) all Commitments have been terminated; *provided, however*, if at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by any Lender upon the insolvency, bankruptcy or reorganization of any of the Borrowers, or otherwise, the Termination Date shall be deemed to have not occurred.

“Termination Event” shall mean (i) a Reportable Event with respect to any Pension Benefit Plan; (ii) the withdrawal of any Credit Party or any member of the Controlled Group from a Pension Benefit Plan during a plan year in which such Person was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (iii) the providing of notice of intent to terminate a Pension Benefit Plan in a distress termination described in Section 4041(c) of ERISA or any termination under Section 4042 of ERISA, or of the appointment of a trustee to administer a Pension Benefit Plan, and with respect to which any Credit Party has liability (including liability in its capacity as a member of the Controlled Group of another entity); (iv) the termination of a Multiemployer Plan pursuant to Section 4041A or 4042 of ERISA, which termination could reasonably result in material liability to any Credit Party (including liability in its capacity as a member of the Controlled Group of another entity); (v) the partial or complete withdrawal within the meaning of Section 4203 or 4205 of ERISA, of any Credit Party or any member of the Controlled Group from a Multiemployer Plan, which withdrawal could reasonably result in liability of any Credit Party (including liability in its capacity as a member of the Controlled Group of another entity); (vi) notice that a Multiemployer Plan is subject to Section 4245 of ERISA; or (vii) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent, upon any Borrower or any member of the Controlled Group.

“Test Period” shall mean, as of any date of determination, the period of four consecutive fiscal quarters of the Parent Guarantor most recently ended on or prior to such date for which financial statements have been or are required to be delivered pursuant to Section 9.8.

“Toxic Substance” shall mean and include any material present on the Real Property which has been shown to have significant adverse effect on human health or which is subject to regulation under the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 *et seq.*, or any other applicable Federal or state laws now in force or hereafter enacted that regulate toxic substances. “Toxic Substance” includes but is not limited to asbestos, polychlorinated biphenyls (PCBs) and lead-based paints.

“Transactions” shall mean (a) the entering into this Agreement, (b) the granting of Liens to secure the Obligations, (c) the consummation of any other transactions in connection with the foregoing including the borrowing of Advances hereunder on the Closing Date, if applicable, (d) the payment of fees and expenses in connection therewith and (e) the filing of the Cases on the Petition Date.

“Transferee” shall have the meaning set forth in Section 16.3(d) hereof.

“Uniform Commercial Code” shall have the meaning set forth in Section 1.3 hereof; provided however that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of Agent’s and the Secured Parties’ security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes

of the provisions hereof, the Security Agreement and any Other Document relating to such perfection or priority and for purposes of definitions relating to such provisions.

“Unliquidated Obligations” means, at any time, any Obligations (or portion thereof) that are contingent in nature or unliquidated at such time or an obligation to provide collateral to secure such obligations.

“Unrestricted Cash” shall mean the aggregate amount of all cash or Cash Equivalents on the consolidated balance sheet of the Parent Guarantor and its Restricted Subsidiaries that is not “restricted” for purposes of GAAP, and is pledged to secure the Obligations and subject to a Deposit Account Control Agreement.

“USA PATRIOT Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

“Write-down and Conversion Powers” shall mean, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.3. Uniform Commercial Code Terms. All terms used herein and defined in the Uniform Commercial Code as adopted in the State of New York from time to time (the “Uniform Commercial Code”) shall have the meaning given therein unless otherwise defined herein. Without limiting the foregoing, the terms “accounts,” “as-extracted collateral,” “chattel paper” (and “electronic chattel paper” and “tangible chattel paper”), “commercial tort claims,” “deposit accounts,” “documents,” “equipment,” “financial asset,” “fixtures,” “general intangibles,” “goods,” “instruments,” “inventory,” “investment property,” “letter-of-credit rights,” “payment intangibles,” “proceeds,” “promissory note” “securities,” “software” and “supporting obligations” as and when used in the description of Collateral or the capitalized terms used within the description of Collateral shall have the meanings given to such terms in Articles 8 or 9 of the Uniform Commercial Code. To the extent the definition of any category or type of collateral is expanded by any amendment, modification or revision to the Uniform Commercial Code, such expanded definition will apply automatically as of the date of such amendment, modification or revision.

1.4. Certain Matters of Construction.

(a) The following rules of construction shall apply in this Agreement and the Other Documents:

(i) The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision.

(ii) 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.

(iii) Any pronoun used shall be deemed to cover all genders.

(iv) Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa.

(v) All references to Laws shall include any amendments of same and any successor Laws.

(vi) Unless otherwise provided, all references to any instruments or agreements, including references to this Agreement or any of the Other Documents, shall include any and all modifications or

amendments thereto, and any and all restatements, amendment and restatements, extensions or renewals thereof, in each case, in accordance therewith and herewith.

(vii) All references herein to the time of day shall mean the time in New York, New York.

(viii) Unless otherwise provided, all calculations shall be performed with Inventory valued at the lower of cost (on a weighted average basis) or current market value.

(ix) Whenever the words “including” or “include” shall be used, such words shall be understood to mean “including, without limitation” or “include, without limitation”.

(x) 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 or cured to the satisfaction of the Required Lenders.

(xi) Any Lien referred to in this Agreement or any of the Other Documents as having been created in favor of Agent, any agreement entered into by Agent pursuant to this Agreement or any of the Other Documents, any payment made by or to or funds received by Agent pursuant to or as contemplated by this Agreement or any of the Other Documents, or any act taken or omitted to be taken by Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of Agent and Secured Parties.

(xii) Wherever the phrase “to the best of Credit Parties’ knowledge” or words of similar import relating to the knowledge or the awareness of any Borrower are used in this Agreement or Other Documents, such phrase shall mean and refer to (x) the actual knowledge of an Authorized Officer of any Credit Party or (y) the knowledge that an Authorized Officer would have obtained if he had engaged in good faith and diligent performance of his duties.

(b) 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.

(c) 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. Notwithstanding the foregoing, with respect to any covenant or any representation and warranty relating to ERISA and environmental matters, such covenant and representation and warranty shall control over any non-specific compliance with law covenant or representation to the extent that there is a direct conflict. All references to filing, registering or recording financing statements or other required documents under the Uniform Commercial Code shall be deemed to include filings and registrations under the PPSA.

1.5. Accounting for Derivatives. In making any computation pursuant to Section 6.5 by reference to any item appearing on the balance sheet or other financial statement of Parent Guarantor and its Subsidiaries, all adjustments to such computation resulting from the application of Statement of Financial Accounting Standards No. 133 shall be disregarded, except to the extent a gain or loss is actually realized with respect to any such item.

II. ADVANCES; PAYMENTS.

2.1. Advances.

(a) Subject to the terms and conditions set forth in this Agreement including this Section 2.1, each Lender, severally and not jointly, will make Advances to Borrowers; provided that, after giving effect to any Advance, (i) such Lender's Revolving Exposure shall not exceed such Lender's Commitment Amount and (ii) the Revolving Facility Usage does not exceed the Maximum Advance Amount. The Advances shall be evidenced, if requested by such Lender, by one or more promissory notes (collectively, the "Revolving Credit Note") substantially in the form attached hereto as Exhibit 2.1(a).

(b) The Agent, the Lenders and the Credit Parties each acknowledge and agree that (i) upon the making of a payment pursuant to Section 2.17 under the heading "FIRST" (the date as specified in the Approved Budget for any such payment, the "Roll-Up Date"), such portion of the Pre-Petition Loans that are repaid on such Roll-Up Date shall be deemed borrowed and funded hereunder concurrently on such Roll-Up Date (the "Roll-Up Loans") in accordance with the terms of the applicable Order, (ii) on the applicable Roll-Up Date, a Roll-Up Loan shall be deemed funded by each Lender in the exact same principal amount equal to the aggregate outstanding principal amount of the Pre-Petition Loans held by such Lender on the Roll-Up Date (immediately prior to the funding of such Roll-Up Loan) and (iii) the aggregate outstanding principal amount of the Pre-Petition Loans shall be automatically substituted and exchanged for (and deemed prepaid by) the Roll-Up Loans deemed made hereunder (and the parties hereto hereby agree that the Agent and the Agent (as defined in the Pre-Petition Credit Agreement) may each conclusively rely on the provisions of this Section 2.1(b) in adjusting the Register and the Register (as defined in the Pre-Petition Credit Agreement) to reflect (x) the cancellation of the aggregate outstanding principal amount of the Pre-Petition Loans and (y) the Roll-Up Loans to be received by the Lenders upon the Roll-Up Date; provided, that notwithstanding the foregoing, (x) no Prior Lender shall receive its portion of the Roll-Up Loans hereunder (and the Pre-Petition Loans of such Prior Lender shall not be deemed exchanged for Roll-Up Loans hereunder) unless such Prior Lender, to the extent such Prior Lender is not then already a Lender hereunder, has, on or prior to the Roll-Up Date, executed and delivered to the Agent a joinder to this Agreement in form and substance reasonably satisfactory to the Agent and (y) unless an appropriate Commitment Transfer Supplement (as defined in the Pre-Petition Credit Agreement) has become effective prior to the Roll-Up Date between any Prior Lender and an assignee thereof who is intended to receive its Roll-Up Loans hereunder, only the lenders listed in the Register (as defined in the Pre-Petition Credit Agreement) as of the Roll-Up Date will receive Roll-Up Loans hereunder (subject to clause (x) of this proviso). Notwithstanding anything to the contrary contained herein, (i) for the period commencing on the Roll-Up Date, Roll-Up Loans shall accrue interest hereunder as a Domestic Rate Loan unless and until the Borrowing Agent elects to convert such Domestic Rate Loan to a LIBOR Rate Loan in accordance with Section 2.2(b) and (e) and (ii) on the first Interest Payment Date applicable to each Roll-Up Loan, in addition to paying all accrued and unpaid interest on such Roll-Up Loan for the period commencing on the Roll-Up Date, the Borrowing Agent shall also pay to the Lenders all accrued and unpaid interest on such Pre-Petition Loan that was exchanged into such Roll-Up Loan for the period ending on the Roll-Up Date at the interest rate applicable to the Prepetition Loan being exchanged for such Roll-Up Loan hereunder as in effect immediately prior to the Roll-Up Date, in accordance with the terms of this Agreement, unless the applicable Order requires the Borrowers to make such payment to the applicable Prior Lenders, prior to such Interest Payment Date, as an adequate protection payment or otherwise.

2.2. Procedures for Requesting Advances; Procedures for Selection of Applicable Interest Rates for All Advances.

(a) Should any amount required to be paid as interest hereunder, or as fees or other charges under this Agreement or any Other Document become due, same shall be deemed a request for an Advance maintained as a Domestic Rate Loan as of the date such payment is due, in the amount required to pay in full such interest, fee, charge or Obligation under this Agreement or any other agreement with Agent or Lenders, and such request shall be irrevocable.

(b) Notwithstanding the provisions of subsection (a) above, in the event any Borrower desires to obtain an Advance hereunder (other than a Roll-Up Loan), Borrowing Agent shall give Agent written notice (a “Borrowing Notice”) by no later than 10:00 a.m. (New York time) on the day which is five (5) Business Days prior to the date such Advance is to be borrowed (or such shorter period as the Agent may agree in its sole discretion), specifying (i) the date of the proposed borrowing (which shall be a Business Day), (ii) the type of borrowing and the amount on the date of such Advance to be borrowed, which amount shall be in an aggregate principal amount that is not less than \$7,500,000 or in integral multiples of \$500,000 in excess thereof thereafter, (iii) whether the Advance is to be a LIBOR Rate Loan or an Domestic Rate Loan, (iv) if applicable, the duration of the first Interest Period therefor and (v) the applicable Borrower’s wire instructions; provided that, no more than three (3) Borrowing Requests may be delivered by the Borrowing Agent as follows: as follows: on or about July 19, 2019, on or about August 19, 2019, on or about September 23, 2019 and on or about the Approved Plan Effective Date, in each case, the proceeds of which shall only be used in accordance with Section 2.12; provided, further that no Lender shall be obligated to make more than three (3) Advances (other than any Roll-Up Loans); provided, further that no Borrower may request an Advance in an amount greater than it requires for the following four-week period in accordance with the Approved Budget. Interest Periods for LIBOR Rate Loans shall be for one month; provided, (A) if an Interest Period would end on a day that is not a Business Day, it shall end on the next succeeding Business Day unless such day falls in the next succeeding calendar month in which case the Interest Period shall end on the next preceding Business Day, (B) any 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) shall end on the last Business Day of the last calendar month of such Interest Period and (C) no Interest Period shall extend beyond the Maturity Date. At the election of Agent or the Required Lenders, no Advance shall be made available to any Borrower during the continuance of a Default or an Event of Default. After giving effect to each requested LIBOR Rate Loan, including those which are converted from a Domestic Rate Loan under Section 2.2(e), there shall not be outstanding more than eight (8) LIBOR Rate Loans (including, for the avoidance of doubt, any Roll Up Loans), in the aggregate.

(c) Each Interest Period of a LIBOR Rate Loan shall commence on the date such LIBOR Rate Loan is made and shall end on such date as Borrowing Agent may elect as set forth in subsection (b)(iii) above or subsection (e) below.

(d) Borrowing Agent shall elect the initial Interest Period applicable to a LIBOR Rate Loan in the Borrowing Notice given to Agent pursuant to Section 2.2(b) or by its notice of conversion given to Agent pursuant to Section 2.2(e), as the case may be. Borrowing Agent shall elect the duration of each succeeding Interest Period by giving irrevocable written notice to Agent of such duration not later than 10:00 a.m. (New York time) on the day which is five (5) Business Days prior to the last day of the then current Interest Period applicable to such LIBOR Rate Loan. If Agent does not receive timely notice of the Interest Period elected by Borrowing Agent, Borrowing Agent shall be deemed to have elected to convert to a Domestic Rate Loan subject to Section 2.2(e) below.

(e) Provided that no Event of Default shall have occurred and be continuing with respect to which Agent or the Required Lenders have elected to suspend Borrower’s ability to incur LIBOR Rate Loans, Borrowing Agent may, with respect to any Advance, on the last Business Day of the then current Interest Period applicable to any outstanding LIBOR Rate Loan, or on any Business Day with respect to Domestic Rate Loans, convert any such loan into a loan of another type in the same aggregate principal amount; provided that any conversion of a LIBOR Rate Loan shall be made only on the last Business Day of the then current Interest Period applicable to such LIBOR Rate Loan. If Borrowing Agent desires to convert a loan, Borrowing Agent shall give Agent written notice by no later than 10:00 a.m. (New York time) (i) on the day which is five (5) Business Days’ prior to the date on which such conversion is to occur with respect to a conversion from a Domestic Rate Loan to a LIBOR Rate Loan, or (ii) on the day which is one (1) Business Day prior to the date on which such conversion is to occur with respect to a conversion from a LIBOR Rate Loan to a Domestic Rate Loan, specifying, in each case, the date of such conversion, the loans to be converted and if the conversion is from a Domestic Rate Loan to any other type of loan, the duration of the first Interest Period therefor.

(f) At its option and upon written notice given prior to 10:00 a.m. (New York time) at least three (3) Business Days' prior to the date of such prepayment, any Borrower may prepay the LIBOR Rate Loans in whole at any time or in part from time to time with accrued interest on the principal being prepaid to the date of such repayment. Borrowing Agent shall specify the date of prepayment of Advances which are LIBOR Rate Loans. No Borrower may, at its option, prepay or repay the Advances in whole at any time or in part from time to time other than on the Maturity Date or in accordance with this Section and Sections 2.6, 2.17 or 11.1 hereof. In the event that any prepayment of a LIBOR Rate Loan is required or permitted on a date other than the last Business Day of the then current Interest Period with respect thereto, such Borrower shall indemnify Agent and Lenders therefor in accordance with Section 2.2(g) hereof.

(g) Each Borrower shall indemnify Agent and Lenders and hold Agent and Lenders harmless from and against any and all actual losses or expenses (including, without limitation, any loss or expense arising from the reemployment of funds obtained by Agent or any Lender or from fees payable to terminate the deposits from which such funds were obtained) that Agent and Lenders may sustain or incur as a consequence of any prepayment (whether voluntary, as a result of acceleration or otherwise), conversion of or to, continuation of, or any default by any Borrower in the payment of the principal of or interest on any LIBOR Rate Loan or failure by any Borrower to complete a borrowing of, a prepayment of or conversion of or to, or continuation of a LIBOR Rate Loan on a day which is not the last day of an Interest Period with respect thereto, including, but not limited to, any interest payable by Agent or Lenders to lenders of funds obtained by it in order to make or maintain its LIBOR Rate Loans hereunder, or after notice thereof has been given. A certificate in reasonable detail as to any additional amounts payable pursuant to the foregoing sentence submitted by Agent or any Lender to Borrowing Agent shall be conclusive absent manifest error. Failure or delay on the part of Agent or any Lender to demand compensation pursuant to this section shall not constitute a waiver of Agent's or such Lender's right to demand such compensation.

(h) Notwithstanding any other provision hereof, if any Applicable Law, treaty, regulation or directive, or any change therein or in the interpretation or application thereof, including without limitation any Change in Law, shall make it unlawful for Lenders or any Lender (for purposes of this subsection (h), the term "Lender" shall include any Lender and the office or branch where any Lender or any corporation or bank controlling such Lender makes or maintains any LIBOR Rate Loans) to make or maintain its LIBOR Rate Loans, the obligation of Lenders to make LIBOR Rate Loans hereunder shall forthwith be cancelled and Borrowers shall, if any affected LIBOR Rate Loans are then outstanding, either pay all such affected LIBOR Rate Loans or convert such affected LIBOR Rate Loans into loans of another type (either on the last day of the Interest Period therefor, if Lenders may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if Lenders may not lawfully continue to maintain such LIBOR Rate Loans). If any such payment or conversion of any LIBOR Rate Loan is made on a day that is not the last day of the Interest Period applicable to such LIBOR Rate Loan, Borrowers shall pay Agent such amount or amounts as may be necessary to compensate Lenders for any actual loss or expense sustained or incurred by Lenders in respect of such LIBOR Rate Loan as a result of such payment or conversion, including (but not limited to) any interest or other amounts payable by Lenders to lenders of funds obtained by Lenders in order to make or maintain such LIBOR Rate Loan. A certificate in reasonable detail as to any additional amounts payable pursuant to the foregoing sentence submitted by Lenders to Borrowing Agent shall be conclusive absent manifest error. Failure or delay on the part of Agent or any Lender to demand compensation pursuant to this section shall not constitute a waiver of Agent's or such Lender's right to demand such compensation. A certificate as to any amounts that a Lender is entitled to receive under this Section 2.2 submitted by such Lender, through Agent, to Borrowing Agent shall be conclusive in the absence of clearly demonstrable error and all such amounts shall be paid by Borrowers promptly upon demand by such Lender. This covenant shall survive the termination of this Agreement and the payment of the Notes and all other amounts payable hereunder.

2.3. Disbursement of Advance Proceeds. All Advances shall be disbursed from whichever office or other place Agent may designate from time to time and, together with any and all other Obligations of Borrowers to Agent or Lenders, shall be charged to Borrowers' Account on Agent's books. Prior to the Maturity Date, Borrowers may use the Advances by borrowing in accordance with the terms and conditions hereof. The

proceeds of each Advance requested by Borrowing Agent on behalf of any Borrower or deemed to have been requested by any Borrower under Section 2.2(b) hereof shall, with respect to requested Advances to the extent Lenders make such Advances, be made available to the applicable Borrower on the day specified in the Borrowing Notice by way of wire transfer to such Borrower's operating account at such bank as Borrowing Agent may designate following notification to Agent, in immediately available federal funds or other immediately available funds or, with respect to Advances deemed to have been requested by any Borrower, be disbursed to Agent to be applied to the outstanding Obligations giving rise to such deemed request.

2.4. [Reserved].

2.5. Repayment of Advances.

(a) The Advances (including, for the avoidance of doubt, the Roll-Up Loans) shall be due and payable in full on the Maturity Date subject to earlier prepayment as herein provided.

(b) [Reserved].

(c) All payments of principal, interest and other amounts payable hereunder, or under any of the Other Documents shall be made to Agent at the Payment Office not later than 1:00 P.M. (New York time) on the due date therefor in lawful money of the United States of America in federal funds or other funds immediately available to Agent. Agent shall have the right to effectuate payment of any and all Obligations due and owing hereunder by charging Borrowers' Account or by making Advances as provided in Section 2.2 hereof.

(d) Borrowers, jointly and severally, shall pay principal, interest, and all other amounts payable hereunder, or under any Other Document, without any deduction whatsoever, including, but not limited to, any deduction for any setoff or counterclaim.

2.6. Repayment of Excess Revolving Facility Usage. If at any time the Revolving Facility Usage exceeds the Maximum Advance Amount, the Borrower shall repay the Advances to eliminate such excess. Such amounts shall be immediately due and payable, without the necessity of any demand, at the Payment Office.

2.7. Statement of Account. Agent shall maintain, in accordance with its customary procedures, a loan account ("Borrowers' Account") in the name of Borrowers in which shall be recorded the date and amount of each Advance made by Agent and the date and amount of each payment in respect thereof; provided however the failure by Agent to record the date and amount of any Advance shall not adversely affect Agent or any Lender. Each month, Agent shall send to Borrowing Agent a statement showing the accounting for the Advances made, payments made or credited in respect thereof, and other transactions between Agent and Borrowers during such month. The monthly statements shall be deemed correct and binding upon Borrowers in the absence of manifest error and shall constitute an account stated between Lenders and Borrowers unless Agent receives a written statement of Borrowers' specific exceptions thereto within sixty (60) days after such statement is received by Borrowing Agent. The records of Agent with respect to the loan account shall be conclusive evidence absent manifest error of the amounts of Advances and other charges thereto and of payments applicable thereto.

2.8. [Reserved].

2.9. Additional Payments. Any sums expended by Agent or any Lender due to any Borrower's failure to perform or comply with its obligations under this Agreement or any Other Document including any Borrower's obligations under Sections 4.2, 4.4, 4.9, 4.11, 4.12, 4.13, 4.14(d) and 6.1 hereof, may be charged to Borrowers' Account as an Advance and added to the Obligations.

2.10. Making and Settlement of Advances.

(a) Each borrowing of Advances shall be advanced according to the applicable Commitment Percentages of the Lenders holding the Commitments (subject to any contrary terms of Section 2.13).

(b) Promptly after receipt by Agent of a request or a deemed request for an Advance pursuant to Section 2.2(b), Agent shall notify the Lenders holding the Commitments of its receipt of such request specifying the information provided by Borrowing Agent and the apportionment among Lenders of the requested Advance as determined by Agent in accordance with the terms hereof. Each Lender shall remit the principal amount of each Advance to Agent such that Agent is able to, and Agent shall, upon receipt of all requested funds, to the extent the applicable Lenders have made funds available to it for such purpose and subject to Section 8.2, fund such Advance to Borrowers in U.S. Dollars and immediately available funds to the applicable Borrower's account set forth in the applicable Borrowing Notice prior to the close of business, on the day specified in the Borrowing Notice; provided that if any applicable Lender fails to remit such funds to Agent in a timely manner, Agent may elect in its sole discretion to fund with its own funds the Advance of such Lender on such borrowing date, and such Lender shall be subject to the repayment obligation in Section 2.10(c) hereof.

(c) Unless Agent shall have received written notice by any Lender holding a Commitment that such Lender will not make the amount which would constitute its applicable Commitment Percentage of the requested Advance available to Agent, Agent may (but shall not be obligated to) assume that such Lender has made such amount available to Agent on such date in accordance with Section 2.10(b) and may, in reliance upon such assumption, make available to Borrowers a corresponding amount. In such event, if a Lender has not in fact made its applicable Commitment Percentage of the requested Advance available to Agent, then the applicable Lender and Borrowers severally agree to pay to Agent on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrowers through but excluding the date of payment to Agent, at (i) in the case of a payment to be made by such Lender, the greater of (A) (x) the daily average Federal Funds Effective Rate (computed on the basis of a year of 360 days) during such period as quoted by Agent, times (y) such amount or (B) a rate determined by Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the Revolving Interest Rate for Advances that are Domestic Rate Loans. If such Lender pays its share of the applicable Advance to Agent, then the amount so paid shall constitute such Lender's Advance. Any payment by Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to Agent. A certificate of Agent submitted to any Lender or Borrower with respect to any amounts owing under this paragraph (c) shall be conclusive, in the absence of manifest error.

(d) [Reserved].

(e) If any Lender or Participant (a "Benefited Lender") shall at any time receive any payment of all or part of its Advances, or interest thereon, or receive any Collateral in respect thereof (whether voluntarily or involuntarily or by set-off) in a greater proportion than any such payment to and Collateral received by any other Lender, if any, in respect of such other Lender's Advances, or interest thereon, and such greater proportionate payment or receipt of Collateral is not expressly permitted hereunder, such Benefited Lender shall purchase for cash from the other Lenders a participation in such portion of each such other Lender's Advances, or shall provide such other Lender with the benefits of any such Collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such Collateral or proceeds ratably with each of the other Lenders; provided however that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that each Lender so purchasing a portion of another Lender's Advances may exercise all rights of payment (including rights of set-off) with respect to such portion as fully as if such Lender were the direct holder of such portion, and the obligations owing to each such purchasing Lender in respect of such participation and such purchased portion of any other Lender's Advances shall be part of the Obligations secured by the Collateral, and the obligations owing to each

such purchasing Lender in respect of such participation and such purchased portion of any other Lender's Advances shall be part of the Obligations secured by the Collateral.

2.11. [Reserved].

2.12. Use of Proceeds.

(a) Credit Parties shall apply the proceeds of Advances (including any Roll-Up Loans) (i) if applicable, on the Closing Date, subject to the limitations set forth in this Agreement, to consummate the Transactions and pay related fees, costs and expenses, (ii) for the financing of the Borrowers' general business purposes, including working capital requirements during the pendency of the Cases and (iii) to pay certain fees and expenses of professionals retained by the Credit Parties, subject to the Carve-Out and for certain other pre-petition and pre-filing expenses that are approved by the applicable Bankruptcy Court and consented to by Agent, in each case of the foregoing clauses (i), (ii) and (iii), in accordance with the Approved Budget or with the prior written consent of the Agent in its sole discretion. Credit Parties shall not be permitted to use the proceeds of the Advances and the proceeds of Collateral in contravention of the provisions of the applicable Order, including any restrictions or limitations on the use of proceeds contained therein.

(b) Without limiting the generality of Section 2.12(a) above, neither a Credit Party nor any other Person which may in the future become party to this Agreement or the Other Documents as a Credit Party, (i) intends to use nor shall they use any portion of the proceeds of the Advances, directly or indirectly, for any purpose in violation of Anti-Terrorism Laws or (ii) shall use any portion of the proceeds of the Advances (A) to permit the Borrower, any Credit Party or any other party-in interest or their respective representatives to challenge or otherwise contest or institute any proceeding to determine (x) the validity, enforceability, perfection or priority of security interests in favor of the Agent or any of the Lenders, or (y) the enforceability of the Obligations, (B) to investigate, commence, prosecute or defend any claim, motion, proceeding or cause of action against the Agent or any of the Lenders and their respective agents, attorneys, advisors or representatives, including, without limitation, any lender liability claims or subordination claims (other than \$35,000 for an official creditors' committee of creditors holding unsecured claims, if any, appointed by the Bankruptcy Court in respect of the Cases pursuant to Section 1102(a) of the Bankruptcy Code committee to investigate such matters), or (C) to fund acquisitions, capital expenditures, capital leases, or any other expenditure, in each case, other than as set forth in the Approved Budget except for any obligation benefitting from the Carve-Out and as otherwise approved in advance in writing by the Required Lenders acting in their sole discretion.

2.13. Defaulting Lender.

(a) Notwithstanding anything to the contrary contained herein, in the event any Lender is a Defaulting Lender, all rights and obligations hereunder of such Defaulting Lender and of the other parties hereto shall be modified to the extent of the express provisions of this Section 2.13 so long as such Lender is a Defaulting Lender.

(b) (i) Except as otherwise expressly provided for in this Section 2.13, Advances shall be made pro rata from Lenders holding Commitments which are not Defaulting Lenders based on their respective Commitment Percentages, and no Commitment Percentage of any Lender or any Pro Rata Share of any Advances required to be advanced by any Lender shall be increased as a result of any Lender being a Defaulting Lender. Amounts received in respect of principal of any type of Advances shall be applied to reduce such type of Advances of each Lender (other than any Defaulting Lender) holding a Commitment in accordance with their Commitment Percentages; provided that Agent shall not be obligated to transfer to a Defaulting Lender any payments received by Agent for the Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder (including any principal, interest or fees). Amounts payable to a Defaulting Lender shall instead be paid to or retained by Agent. Agent may hold and, in its discretion, re-lend to Borrowers the amount of such payments received or retained by it for the account of such Defaulting Lender.

(ii) Fees pursuant to Section 3.3 hereof shall cease to accrue in favor of such Defaulting Lender while such Person is a Defaulting Lender.

(c) A Defaulting Lender shall not be entitled to give instructions to Agent or to approve, disapprove, consent to or vote on any matters relating to this Agreement and the Other Documents, and all amendments, waivers and other modifications of this Agreement and the Other Documents may be made without regard to a Defaulting Lender and, for purposes of the definition of "Required Lenders," a Defaulting Lender shall not be deemed to be a Lender, to have any outstanding Advances or a Commitment Percentage; provided that this clause (c) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification described in Section 16.2(b)(i).

(d) Other than as expressly set forth in this Section 2.13, the rights and obligations of a Defaulting Lender (including the obligation to indemnify Agent) and the other parties hereto shall remain unchanged. Nothing in this Section 2.13 shall be deemed to release any Defaulting Lender from its obligations under this Agreement and the Other Documents, shall alter such obligations, shall operate as a waiver of any default by such Defaulting Lender hereunder, or shall prejudice any rights which any Borrower, Agent or any Lender may have against any Defaulting Lender as a result of any default by such Defaulting Lender hereunder.

(e) In the event that the Agent and the Borrowers agree in writing that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Agent will so notify the parties hereto, and on such date such Lender shall purchase at par such of the Advances of the other Lenders as the Agent shall determine may be necessary in order for such Lender to hold such Advances in accordance with its Commitment Percentage.

2.14. [Reserved].

2.15. [Reserved].

2.16. [Reserved].

2.17. Mandatory Prepayments. (a) Upon receipt by a Credit Party or Agent of any proceeds of Collateral, including for the avoidance of doubt, Inventory and Receivables, such proceeds shall be delivered, or caused to be delivered or deemed to be delivered in the case of clause "FIRST" below", to Agent as a prepayment of the Advances and shall be applied as follows:

FIRST, to permanently reduce the Prior Lender Obligations in accordance with the provisions of the Pre-Petition Credit Agreement, until paid in full;

SECOND, to the payment of any fees, costs, indemnities, and expenses, including attorneys' fees of Agent payable or reimbursable by the Credit Parties under this Agreement or any of the Other Documents;

THIRD, to the payment of all interest and fees on the Obligations then due and payable owed to the Lenders;

FOURTH, to the payment of all principal of the Advances; and

FIFTH, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto.

(b) The foregoing clause shall not be deemed to be implied consent of the Lenders to any such transaction otherwise prohibited by the terms and conditions hereof.

(c) Any Lender may elect, by notice to the Agent at or prior to the time and in the manner specified by the Agent, prior to any prepayment of Advances required to be made by the Borrowers pursuant to this Section 2.17 under the headings ‘FOURTH’ and ‘FIFTH’, to decline all or a portion of its Applicable Percentage of such prepayment (such declined amounts, the “Declined Proceeds”), in which case such Declined Proceeds may be retained by the Borrowers and applied in accordance with the terms of this Agreement. If any Lender fails to deliver a notice to the Agent of its election to decline receipt of its Applicable Percentage of any mandatory prepayment within the time frame specified by the Agent, such failure will be deemed to constitute an acceptance of such Lender’s Applicable Percentage of the total amount of such mandatory prepayment of Advances.

2.18. Superpriority Nature of Obligations and Agent’s Liens.

(a) The priority of Agent’s Liens on the Collateral owned by the Debtors shall be set forth in the Interim Order and the Final Order.

(b) All Obligations shall constitute allowed administrative expenses of the Debtors in the Cases, with administrative priority and senior secured status under Sections 364(c)(1) and 364(d) of the Bankruptcy Code (the “DIP Superpriority Claim”) other than relative to (A) Prior Permitted Liens and (B) the Carve-Out. Subject only to the Carve-Out, such administrative claim shall have priority over all other costs, claims and expenses of the kinds specified in, or ordered pursuant to, Bankruptcy Code Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113, 1114 or any other provision of the Bankruptcy Code or otherwise and shall at all times be senior to the rights of the Debtors, the Debtors’ estates and any successor trustee or estate representative in the Cases or any subsequent proceeding or case under the Bankruptcy Code. The Liens granted to the Agent, on behalf of the Secured Parties, on the Collateral, and the priorities accorded to the Obligations shall have the priority and senior secured status afforded by Section 364(c) and Section 364(d) of the Bankruptcy Code (all as more fully set forth in the Interim Order and Final Order) senior to all claims and interests other than (A) Prior Permitted Liens and (B) the Carve-Out.

(c) The Agent’s Liens on the Collateral and Agent’s and other Secured Parties’ respective administrative claims under Sections 364(c)(1) of the Bankruptcy Code afforded the Obligations shall also have priority over any claims arising under Section 506(c) of the Bankruptcy Code subject and subordinate only to the Carve-Out. Except as set forth herein or in the Interim Order or the Final Order, no other Lien having a priority superior to or pari passu with that granted to Agent and Lenders and the Prior Agent and the Prior Lenders shall be granted or approved while any Obligations under this Agreement or the Prior Lender Obligations under the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement remain outstanding.

(d) Except for the Carve-Out, as set forth in the Interim Order and the Final Order, no costs or expenses of administration shall be imposed against the Agent, the Lenders or any of the Collateral or the Prior Agent and Prior Lenders under the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement or any of the Collateral (as defined in the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement, as applicable) under Sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, and each of the Debtors hereby waives for itself and on behalf of its estate in bankruptcy, any and all rights under Sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against Agent or the Lenders or the Prior Agent and Prior Lenders under the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement.

2.19. Payment of Obligations. Upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the Other Documents, Agent and Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

2.20. No Discharge; Survival of Claims. The Credit Parties agree that (a) the Obligations hereunder and the Other Documents and the Prior Lender Obligations under the Pre-Petition Credit Agreement, the Second

Lien Note Purchase Agreement and the other Pre-Petition Loan Documents shall not be discharged by the entry of an order confirming a plan of reorganization, compromise or arrangement in any of the Insolvency Cases (notwithstanding the provisions of Section 1141(d)(4) of the Bankruptcy Code) or any Successor Case, any order converting a Case to a case under Chapter 7 of the Bankruptcy Code, or dismissing any Case, or withdrawing the reference in any Case or Successor Case or terminating the joint administration of the Cases or any Successor Cases or by any other act or omission and (b) the DIP Superpriority Claim granted to the Agent and Lenders pursuant to the Interim Order and Final Order and described in Section 2.18 and the Liens granted to the Agent pursuant to the Interim Order and Final Order and described in Section 2.18 shall not be affected in any manner by the entry of an order confirming a plan of reorganization in the Cases or any Successor Case.

2.21. Release. The Credit Parties hereby acknowledge effective upon entry of the applicable Order, that no Credit Party has any defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of the Credit Parties' liability to repay Agent or any Lender as provided in this Agreement or the Prior Agent or any Prior Lender as provided in the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement or to seek affirmative relief or damages of any kind or nature from Agent, any Lender, Prior Agent or any Prior Lender. Each Credit Party, on behalf of itself and its bankruptcy estate, and on behalf of all its successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them (collectively, the "Releasing Parties"), hereby fully, finally and forever release and discharge Agent, Lenders, Prior Agent and Prior Lenders and all Affiliates of each such Person (collectively, the "Released Parties") of and from any and all past, present and future 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, whether in law, equity or otherwise (including those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the Interim Order, the Final Order and 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.

2.22. Waiver of any Priming Rights. Upon the Closing Date, and on behalf of itself and its estate, and for so long as any Obligations shall be outstanding, each Credit Party hereby irrevocably waives 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 Liens securing the Obligations, or to approve a claim of equal or greater priority than the Obligations (other than the Carve-Out).

III. INTEREST AND FEES.

3.1. Interest. Advances shall bear interest as either LIBOR Rate Loans or Domestic Rate Loans. Subject to Section 2.1 in respect of Roll-Up Loans, Interest on Advances shall be payable in arrears on (a) the first Business Day of each month with respect to Domestic Rate Loans, (b) at the end of each Interest Period with respect to LIBOR Rate Loans and (c) in each case, on the Termination Date (the dates referenced in clauses (a) and (b), an "Interest Payment Date"). Interest charges shall be computed on the actual principal amount of Advances (including Roll-Up Loans) outstanding during the month preceding the payment date in the case of Domestic Rate Loans and during the Interest Period in the case of LIBOR Rate Loans at a rate per annum equal to the applicable Revolving Interest Rate. Whenever, subsequent to the date of this Agreement, the Alternate Base Rate is increased or decreased, the applicable Revolving Interest Rate for Domestic Rate Loans shall be similarly changed without notice or demand of any kind by an amount equal to the amount of such change in the Alternate Base Rate during the time such change or changes remain in effect. The LIBOR Rate shall be adjusted

with respect to LIBOR Rate Loans without notice or demand of any kind on the effective date of any change in the Reserve Percentage as of such effective date. Upon the occurrence of an Event of Default and during the continuation thereof, without further notice, motion or application to, hearing before, or order from the Bankruptcy Court, the Obligations shall bear interest at the applicable Revolving Interest Rate plus two (2%) percent per annum (the “Default Rate”).

3.2. [Reserved].

3.3. Commitment Fee. If, for any calendar quarter prior to the Maturity Date, the average daily unpaid balance of the Advances (other than any Roll-Up Loans) for each day of such calendar quarter does not equal the Maximum Advance Amount, then Borrowers shall pay to Agent for the ratable benefit of Lenders a fee at a rate equal to 1.00% per annum on the amount by which the Maximum Advance Amount exceeds such average daily unpaid balance of the Advances (other than any Roll-Up Loans) for each day of such calendar quarter. Such fee shall be payable to Agent in arrears on the first Business Day of each calendar quarter with respect to the previous calendar quarter.

3.4. Collateral Monitoring Fee, Collateral Evaluation Fee and Fee Letter.

(a) [Reserved].

(b) [Reserved].

(c) Borrowers shall pay the amounts required to be paid in the Fee Letter in the manner and at the times required by the Fee Letter.

3.5. Computation of Interest and Fees. Interest hereunder computed at the Alternate Base Rate shall be computed on the basis of a year of 365 or 366 (as applicable) days and for the actual number of days elapsed. All other fees and interest hereunder shall be computed on the bases of a year of 360 days and for the actual number of days elapsed. If any payment to be made hereunder becomes due and payable on a day other than a Business Day, the due date thereof shall be extended to the next succeeding Business Day and interest thereon shall be payable at the applicable Revolving Interest Rate during such extension.

3.6. Maximum Charges. It is the intention of the parties to comply strictly with applicable usury laws. Accordingly, no rate change shall be put into effect that would result in a rate greater than the highest rate permitted by law. Notwithstanding anything to the contrary contained in this Agreement or in any Other Document, all agreements which either now are or which shall become agreements among Borrowers, Agent and Lenders are hereby limited so that in no contingency or event whatsoever shall the total liability for payments in the nature of interest, additional interest and other charges exceed the applicable limits imposed by any applicable usury laws. If any payments in the nature of interest, additional interest and other charges made under this Agreement or any Other Document are held to be in excess of the limits imposed by any applicable usury laws, it is agreed that any such amount held to be in excess shall be considered payment of principal hereunder, and the indebtedness evidenced hereby shall be reduced by such amount so that the total liability for payments in the nature of interest, additional interest and other charges shall not exceed the applicable limits imposed by any applicable usury laws, in compliance with the desires of Borrowers and Agent. This provision shall never be superseded or waived and shall control every other provision of this Agreement or any Other Document and all agreements among Borrowers, Agent and Lenders, or their respective successors and assigns. Unless preempted by federal law or as permitted under the sentence immediately following this sentence, the applicable Revolving Interest Rate from time to time in effect under this Agreement may not exceed the “weekly ceiling” from time to time in effect under Chapter 303 of the Texas Finance Code (the “Texas Finance Code”). If the applicable state or federal law is amended in the future to allow a greater rate of interest to be charged under this Agreement than is presently allowed by applicable state or federal law, then the limitation of interest hereunder shall be increased to the maximum rate of interest allowed by applicable state or federal law as amended, which increase shall be effective hereunder on the effective date of such amendment, and all interest charges owing to

Lenders by reason thereof shall be payable in accordance with Section 2.5 hereof. If by operation of this provision, Borrowers would be entitled to a refund of interest paid pursuant to this Agreement, each Lender agrees that it shall pay to Borrowing Agent, upon Agent's request, such Lender's Commitment Percentage of such interest to be refunded, as determined by Agent. As provided in Section 16.1 hereof, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law provisions. The provisions of this Section 3.6 with respect to the Texas Finance Code are included solely out of an abundance of caution and shall not be construed to mean that any provisions of Texas law are in any way applicable to this Agreement, the Other Documents or any of the Obligations.

3.7. Increased Costs. In the event that any Applicable Law or any Change in Law or compliance by any Lender (for purposes of this Section 3.7, the term "Lender" shall include Agent or Lender and any corporation or bank controlling Agent or any Lender and the office or branch where Agent or any Lender (as so defined) makes or maintains any LIBOR Rate Loans) with any request or directive (whether or not having the force of law) from any central bank or other financial, monetary or other authority, shall:

(a) subject Agent or any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Other Document or any LIBOR Rate Loan, or change the basis of taxation of payments to Agent or such Lender in respect thereof (except for (i) Indemnified Taxes or Other Taxes indemnified under Section 3.10, (ii) any Taxes described in clauses (b) through (d) of the definition of Excluded Tax and (iii) Connection Income Taxes);

(b) impose, modify or deem applicable any reserve, special deposit, assessment, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, or deposits in or for the account of, advances or loans by, or other credit extended by, any office of Agent or any Lender, including pursuant to Regulation D of the Board of Governors of the Federal Reserve System; or

(c) impose on Agent or any Lender or the London interbank LIBOR market any other condition, loss or expense (other than Taxes) affecting this Agreement or any Other Document or any Advance made by any Lender;

and the result of any of the foregoing is to increase the cost to Agent or any Lender of making, converting to, continuing, renewing or maintaining its Advances hereunder by an amount that Agent or such Lender deems to be material or to reduce the amount of any payment (whether of principal, interest or otherwise) in respect of any of the Advances by an amount that Agent or such Lender deems to be material, then, in any case Borrowers shall promptly pay Agent or such Lender, upon its demand, such additional amount as will compensate Agent or such Lender for such additional cost or such reduction, as the case may be, provided that the foregoing shall not apply to increased costs which are reflected in the LIBOR Rate. Agent or such Lender shall certify the amount of such additional cost or reduced amount to Borrowing Agent, and such certification shall be conclusive absent manifest error. Failure or delay on the part of Agent or any Lender to demand compensation pursuant to this section shall not constitute a waiver of such Person's right to demand such compensation.

3.8. Effect of Benchmark Transition Event.

(a) Notwithstanding anything to the contrary herein or in any Other Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Agent and the Borrowing Agent may amend this Agreement to replace LIBOR Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Agent has posted such proposed amendment to all Lenders and the Borrowing Agent so long as the Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders accept such amendment. No replacement of LIBOR Rate with a Benchmark

Replacement pursuant to this Section titled “Effect of Benchmark Transition Event” will occur prior to the applicable Benchmark Transition Start Date.

(b) In connection with the implementation of a Benchmark Replacement, the Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any Other Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(c) The Agent will promptly notify the Borrowing Agent and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or Lenders pursuant to this Section titled “Effect of Benchmark Transition Event,” 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, 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 hereto, except, in each case, as expressly required pursuant to this Section titled “Effect of Benchmark Transition Event.”

(d) Upon the Borrowing Agent’s receipt of notice of the commencement of a Benchmark Unavailability Period, the applicable Borrower may revoke any request for a borrowing of Advances in LIBOR Rate, conversion to or continuation of LIBOR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Alternate Base Rate Loans. During any Benchmark Unavailability Period, the component of Alternate Base Rate based upon LIBOR Rate will not be used in any determination of Alternate Base Rate.

(e) As used in this Section titled “Effect of Benchmark Transition Event”:

“Benchmark Replacement” means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Agent and the Borrowing Agent giving due consideration to (i) any selection or recommendation of a replacement 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 rate of interest as a replacement to LIBOR Rate for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Benchmark Replacement Adjustment” means, with respect to any replacement of LIBOR Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, 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 Agent and the Borrowing Agent giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making

payments of interest and other administrative matters) that the Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to LIBOR Rate: (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of LIBOR Rate permanently or indefinitely ceases to provide LIBOR Rate; or (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to LIBOR Rate: (1) a public statement or publication of information by or on behalf of the administrator of LIBOR Rate announcing that such administrator has ceased or will cease to provide LIBOR Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR Rate; (2) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR Rate, a resolution authority with jurisdiction over the administrator for LIBOR Rate or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR Rate, which states that the administrator of LIBOR Rate has ceased or will cease to provide LIBOR Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR Rate; or (3) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR Rate announcing that LIBOR Rate is no longer representative.

“Benchmark Transition Start Date” means (a) 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 90th 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) and (b) in the case of an Early Opt-in Election, the date specified by the Agent or the Required Lenders, as applicable, by notice to the Borrowing Agent, the Agent (in the case of such notice by the Required Lenders) and the Lenders.

“Benchmark Unavailability Period” means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR Rate and solely to the extent that LIBOR Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR Rate for all purposes hereunder in accordance with the Section titled “Effect of Benchmark Transition Event” and (y) ending at the time that a Benchmark Replacement has replaced LIBOR Rate for all purposes hereunder pursuant to the Section titled “Effect of Benchmark Transition Event.”

“Early Opt-in Election” means the occurrence of: (1) (i) a determination by the Agent or (ii) a notification by the Required Lenders to the Agent (with a copy to the Borrowing Agent) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in this Section titled “Effect of Benchmark Transition Event,” are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR Rate, and (2) (i) the election by the Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Agent of written notice of such election to the Borrowing Agent and the Lenders or by the Required Lenders of written notice of such election to the Agent.

“Federal Reserve Bank of New York’s Website” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

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

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.

“Term SOFR” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

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

3.9. Capital Adequacy.

(a) In the event that Agent or any Lender shall have determined that any Applicable Law or guideline regarding capital adequacy or liquidity, or any Change in Law or any change in the interpretation or administration thereof by any Governmental Body, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Agent or any Lender (for purposes of this Section 3.9, the term “Lender” shall include Agent or any Lender and any corporation or bank controlling Agent or any Lender and the office or branch where Agent or any Lender (as so defined) makes or maintains any LIBOR Rate Loans) with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on Agent or any Lender’s capital as a consequence of its obligations hereunder to a level below that which Agent or such Lender could have achieved but for such adoption, change or compliance (taking into consideration Agent’s and each Lender’s policies with respect to capital adequacy and liquidity) by an amount deemed by Agent or any Lender to be material, then, from time to time, Borrowers shall pay upon demand to Agent or such Lender such additional amount or amounts as will compensate Agent or such Lender for such reduction. In determining such amount or amounts, Agent or such Lender may use any reasonable averaging or attribution methods. The protection of this Section 3.9 shall be available to Agent and each Lender regardless of any possible contention of invalidity or inapplicability with respect to the Applicable Law, rule, regulation, guideline or condition.

(b) A certificate of Agent or such Lender setting forth such amount or amounts as shall be necessary to compensate Agent or such Lender with respect to Section 3.9(a) hereof when delivered to Borrowing Agent shall be conclusive absent manifest error.

(c) If Agent or any Lender requests compensation under Section 3.7 or Section 3.9 or if Borrowers are required to pay any additional amount to Agent or any Lender pursuant to Section 3.7 or Section 3.9, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Advances hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of Agent or such Lender, such designation or assignment (i) would eliminate or reduce materially amounts payable pursuant to Section 3.7 or Section 3.9, as the case may be, in the future, (ii) would not subject Agent or such Lender to any unreimbursed cost or expense, (iii) would not require Agent or such Lender to take any action inconsistent with its internal policies or legal or regulatory restrictions, and (iv) would not otherwise be disadvantageous to Agent or such Lender.

3.10. Taxes.

(a) Any and all payments by or on account of any Obligations hereunder or under any Other Document shall be made free and clear of and without reduction or withholding for any Taxes except to the extent required by Applicable Law; provided that if any Credit Party or any applicable withholding agent shall be required by Applicable Law to deduct any Taxes from such payments, then (i) if such Taxes are Indemnified Taxes, the sum payable shall be increased as necessary so that after making all required deductions for Indemnified Taxes (including deductions for Indemnified Taxes applicable to additional sums payable under this Section 3.10) the applicable Recipient receives an amount equal to the sum it would have received had no such deductions for Indemnified Taxes been made, (ii) the applicable withholding agent shall make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Body in accordance with Applicable Law.

(b) Without limiting the provisions of Section 3.10(a) above, the Borrowers shall timely pay, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes to the relevant Governmental Body in accordance with Applicable Law.

(c) The Borrowers shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.10) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender (with a copy to Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Body, the Borrowers shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

(e) Any Lender that is entitled to an exemption from or reduction of any withholding Tax with respect to payments hereunder or under any Other Document shall deliver to the Borrowers (with a copy to Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrowers or Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrowers or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrowers or Agent as will enable the Borrowers or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, each Lender shall deliver to the Borrowers and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrowers or the Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, two (2) duly completed valid originals of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "interest" article of such tax treaty,

(ii) two (2) duly completed valid originals of IRS Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit 3.10-1 (together with Exhibits 3.10-2, 3.10-3 and 3.10-4, each a “Non-Bank Tax Certificate”) to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of any Borrower within the meaning of section 871(h)(3)(B) of the Code, or (C) a “controlled foreign corporation” related to any Borrower described in section 881(c)(3)(C) of the Code and (y) two duly completed valid originals of IRS Form W-8BEN or IRS Form W-8BEN-E,

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a certificate substantially in the form of Exhibit 3.10-2 or Exhibit 3.10-3, IRS Form W-9, and/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 certificate substantially in the form of Exhibit 3.10-4 on behalf of each such direct and indirect partner,

(v) any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrowers to determine the withholding or deduction required to be made; provided that the completion, execution and submission of such documentation (other than such documentation set forth in Sections 3.10(e)(i)-(iv), 3.10(e)(vi) and 3.10(f)) 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, or

(vi) in the case of a Lender that is a United States person within the meaning of section 7701(a)(30) of the Code, two duly completed valid (2) originals of an IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax.

Notwithstanding any other provisions of this Section 3.10(e), a Lender shall not be required to deliver any form or other documentation that such Lender is not legally eligible to deliver.

(f) If a payment made to a Lender under this Agreement or any Other Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient shall deliver to the Agent and the Borrowers at the time or times prescribed by Applicable Law or reasonably requested by the Borrowers or Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such other documentation reasonably requested by the Agent or any Borrower sufficient for Agent and the Borrowers to comply with their obligations under FATCA and to determine whether such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (f), “FATCA” shall include any amendments made to FATCA after the Closing Date.

(g) Each Recipient agrees that if any form or certification it previously delivered pursuant to clauses (e) or (f) above expires or becomes inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowing Agent and the Agent in writing of its legal ineligibility to so.

(h) [Reserved].

(i) If a Recipient determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which the Borrowers have paid additional amounts pursuant to this Section 3.10, it shall pay to the Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the

Borrowers under this Section 3.10 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund); net of all out-of-pocket expenses (including Taxes) of such Recipient and without interest (other than any interest paid by the relevant Governmental Body with respect to such refund), provided that the Borrowers, upon the request of such Recipient, agree to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Body) to such Recipient in the event such Recipient is required to repay such refund to such Governmental Body. Notwithstanding anything to the contrary in this clause (i), in no event will a Recipient be required to pay any amount to the Borrowers pursuant to this clause (i) the payment of which would place the Recipient in a less favorable net after-Tax position than the Recipient 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 Section 3.10(i) shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrowers or any other Person.

(j) Each Recipient agrees that, upon the occurrence of any event giving rise to the operation of Section 3.10(a) or (c) with respect to such Recipient, it will, if requested by the Borrowers in writing, use commercially reasonable efforts (subject to legal and regulatory restrictions) to mitigate the effect of any such event by designating another lending office for any Commitment or Advance affected by such event if that would reduce or eliminate any amount of Indemnified Taxes or Other Taxes required to be deducted or withheld or paid, provided that doing so would not subject such Recipient to any unreimbursed cost or expense or be otherwise be prejudicial to such Recipient, in such Recipient's reasonable discretion. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Recipient in connection with any such designation.

(k) [Reserved].

(l) The agreements in this Section 3.10 shall survive the termination of this Agreement and the Commitments and the payment of all amounts payable hereunder and under any Other Document.

3.11. Replacement of Lenders. If any Lender (an "Affected Lender") (a) makes demand upon Borrowers for (or if Borrowers are otherwise required to pay) amounts pursuant to Section 3.7, 3.9 or 3.10 hereof, (b) is unable to make or maintain LIBOR Rate Loans as a result of a condition described in Section 2.2(h) hereof, (c) is a Defaulting Lender, or (d) denies any consent for a supplemental agreement referred to in the proviso of Section 16.2(b) hereof and for which the consent of the Required Lenders has been obtained, the Borrowers may, within ninety (90) days of receipt of such demand, notice (or the occurrence of such other event causing Borrowers to be required to pay such compensation or causing Section 2.2(h) hereof to be applicable), or such Lender becoming a Defaulting Lender or denial of a request for a consent to a supplemental agreement pursuant to the proviso of Section 16.2(b) hereof, as the case may be, by notice (a "Replacement Notice") in writing to the Agent and such Affected Lender (i) request the Affected Lender to cooperate with Borrowers in obtaining a replacement Lender satisfactory to the Agent and Borrowers (the "Replacement Lender"); (ii) request the non-Affected Lenders to acquire and assume all of the Affected Lender's Advances and its Commitment Percentage, as provided herein, but none of such Lenders shall be under any obligation to do so; or (iii) propose a Replacement Lender subject to approval by the Agent in its good faith business judgment. If any satisfactory Replacement Lender shall be obtained, and/or if any one or more of the non-Affected Lenders shall agree to acquire and assume all of the Affected Lender's Advances and its Commitment Percentage, then such Affected Lender shall assign, in accordance with Section 16.3 hereof, all of its Advances and its Commitment Percentage, and other rights and obligations under this Agreement and the Other Documents to such Replacement Lender or non-Affected Lenders, as the case may be, in exchange for payment of the principal amount so assigned and all interest and fees accrued on the amount so assigned, *plus* all other Obligations then due and payable to the Affected Lender. If any Affected Lender does not execute an assignment in accordance with Section 16.3 within five (5) Business Days after receipt of notice to do so by Agent or Borrowing Agent, then such assignment shall become effective for purposes of Section 16.3 and this Agreement upon execution by Agent and Borrowing Agent.

IV. COLLATERAL: GENERAL TERMS.

4.1. Security Interest in the Collateral. Subject to Section 2.18, to secure the prompt payment and performance to Agent and each Secured Party of the Obligations (other than any Obligations under Environmental Indemnity Agreements which by their terms are unsecured), each Credit Party hereby assigns, pledges and grants to Agent for its benefit and for the benefit of each Secured Party a continuing security interest in and to and Lien on all of its Collateral, whether now owned or existing or hereafter acquired or arising and wheresoever located. Each Credit Party shall mark its books and records as may be necessary or appropriate to evidence, protect and perfect Agent's security interest. Contemporaneously with the delivery of the financial statements required by Section 9.8(a), each Borrower shall identify all commercial tort claims with a value in excess of \$100,000 in the Compliance Certificate for such period, and Borrowers shall include the case title together with the applicable court and a brief description of the claim(s). Upon delivery of each such Compliance Certificate, such Credit Party shall be deemed to hereby grant to Agent a security interest and lien in and to such commercial tort claims described therein and all proceeds thereof. The Liens securing the Obligations shall be first priority perfected Liens subject only to the Prior Permitted Liens and the Carve-Out, in accordance with Section 2.18.

4.2. Perfection of Security Interest. Notwithstanding the perfection of any security interest granted hereunder pursuant to the order of the Bankruptcy Court under the applicable Order, each Credit Party hereby authorizes Agent to file against such Credit Party, and Agent may file, one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code, the PPSA and other Applicable Laws in form and substance satisfactory to Agent in its Permitted Discretion (which statements may have a description of collateral which is broader than that set forth herein, including "all assets now owned or hereafter acquired by the Credit Party or in which Credit Party otherwise has rights"). Each Credit Party hereby further authorizes Agent to file filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country), including this Agreement or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by such Credit Party hereunder, naming such Credit Party, as debtor, and Agent, as secured party.

4.3. Protection of Collateral. No Credit Party shall sell, lease, transfer or otherwise dispose of any Collateral, except as permitted in Section 7.1 hereof.

4.4. Preservation of Collateral. Each Credit Party will safeguard and protect all Collateral for Agent's and the other Secured Parties' general account. In addition to the rights and remedies set forth in Section 11.1 hereof, Agent may at any time take such steps as Agent deems necessary in the exercise of its Permitted Discretion, and as approved by the Bankruptcy Court, to protect the Secured Parties' interest in and to preserve the Collateral.

4.5. Ownership of Collateral. With respect to the Collateral, at the time the Collateral becomes subject to Agent's security interest: (i) [reserved] (ii) except for Permitted Encumbrances, the Collateral shall be free and clear of all Liens; and (iii) each Credit Party's Equipment and Inventory shall be located as set forth on Schedule 15 to the Perfection Certificate and shall not be removed from such location(s) without the prior written consent of Agent, except (1) as may be moved from one location on such schedule to another location on such schedule, (2) Inventory in-transit, (3) Equipment out for repair in the ordinary course of business, (4) the sale, transfer or disposition of assets permitted under this Agreement to a Person that is not a Credit Party, (5) as may be located at locations not set forth on Schedule 15 to the Perfection Certificate to the extent the aggregate value of Equipment and Inventory at such locations does not exceed \$100,000 for any one location or \$250,000 in the aggregate for all such locations or (6) as set forth in the applicable Order as approved by the Bankruptcy Court.

4.6. Defense of Agent's and Lenders' Interests. Until the Termination Date, Agent's security interests in the Collateral shall continue in full force and effect. Each Credit Party shall use all commercially reasonable efforts to defend Agent's interests in the Collateral against any and all Persons whatsoever. At any time following demand by Agent for payment of all Obligations upon the occurrence of and during the

continuance of an Event of Default and as set forth in the applicable Order as approved by the Bankruptcy Court, Agent shall have the right to take possession of the indicia of the Collateral and the Collateral in whatever physical form contained, including: labels, stationery, documents, instruments and advertising materials. If Agent exercises this right to take possession of the Collateral, upon the occurrence of and during the continuance of an Event of Default, Credit Parties shall, upon demand, assemble it in the best manner possible and make it available to Agent at a place reasonably convenient to Agent. In addition, with respect to all Collateral, Agent and each other Secured Parties shall be entitled to all of the rights and remedies set forth herein and further provided to a secured party on default by the Uniform Commercial Code, the PPSA or other Applicable Law. Each Credit Party shall, and Agent may, at its option upon the occurrence and during the continuance of an Event of Default and as set forth in the applicable Order as approved by the Bankruptcy Court, instruct all suppliers, carriers, forwarders, warehousemen or others receiving or holding cash, checks, Inventory, documents or instruments in which Agent holds a security interest to deliver same to Agent and/or subject to Agent's order and if they shall come into any Credit Party's possession, they, and each of them, shall be held by such Credit Party in trust as Agent's trustee, and such Credit Party will immediately deliver them to Agent in their original form together with any necessary endorsement. For the purpose of enabling Agent, during the continuance of an Event of Default, to exercise rights and remedies under this Agreement and each Other Document at such time as Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Credit Party hereby grants to Agent, to the extent assignable, an irrevocable, non-exclusive license to use, assign, license or sublicense any of the Intellectual Property now owned or hereafter acquired by such Credit Party, wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

4.7. Books and Records. Each Credit Party shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business and affairs in accordance with GAAP.

4.8. Compliance with Laws. Each Credit Party shall comply with all Applicable Laws with respect to the Collateral or any part thereof or to the operation of such Credit Party's business the non-compliance with which could reasonably be expected to have a Material Adverse Effect. Each Credit Party may, however, if applicable, Properly Contest any Lien or obligation arising under Applicable Law.

4.9. Access to Premises. Without limiting Agent's rights with respect to appraisals as set forth herein and without limiting Agent's rights under Section 4.4, during normal business hours and upon reasonable notice and mutual agreement (except that, upon the occurrence and continuance of an Event of Default or during the pendency of the Cases, no notice shall be required and Agent may exercise such right during any hours), Agent and its agents may conduct Field Examinations and in connection therewith (i) enter upon any premises of any Credit Party and access any tangible assets, (ii) access and make abstracts and copies from each Credit Party's books, records, audits, correspondence and all other papers relating to the Collateral, (iii) discuss the affairs, finances and business of Credit Parties with any officer, employee or director thereof or with their Accountants or auditors, all of whom are hereby authorized to disclose to Agent all financial statements and other information relating to such affairs, finances or business. The Credit Parties shall be obligated to reimburse Agent for the expenses of Field Examinations, audits, appraisals, desktop appraisals, and inspections as requested by Agent in its reasonable discretion.

4.10. Insurance. The assets and properties of each Credit Party at all times shall be maintained in accordance with the requirements of all insurance carriers which provide insurance with respect to the assets and properties of such Credit Party so that such insurance shall remain in full force and effect. Each Credit Party shall bear the full risk of any loss of any nature whatsoever with respect to the Collateral. At each Credit Party's own cost and expense in amounts and with licensed and reputable carriers, each Credit Party shall (a) keep all its insurable properties and properties in which such Credit Party has an interest insured against the hazards of fire, flood, sprinkler leakage, those hazards covered by extended coverage insurance and such other hazards, and for such amounts, as is customary in the case of companies engaged in businesses similar to such Credit Party's including business interruption insurance for Credit Parties that are operating companies; (b) maintain public

and product liability insurance against claims for personal injury, death or property damage suffered by others; (c) maintain all such worker's compensation or similar insurance as may be required under the laws of any state or jurisdiction in which such Credit Party is engaged in business; and (d) furnish Agent with (i) certificates therefor that are reasonably satisfactory to Agent and evidence of the maintenance of such policies by the renewal thereof at least thirty (30) days before any expiration date, and (ii) appropriate lender loss payable endorsements in form and substance reasonably satisfactory to Agent in its Permitted Discretion, naming Agent as an additional insured, lender loss payee or mortgagee, as applicable, as its interests may appear with respect to all insurance coverage referred to in clauses (a) and (b) above, and providing (A) that all proceeds relating to Collateral thereunder shall be payable to Agent upon the occurrence and during the continuation of an Event of Default, (B) no such insurance shall be affected by any act or neglect of the insured or owner of the property described in such policy, and (C) that such policy and loss payable clauses may not be cancelled, amended or terminated unless at least thirty (30) days' prior written notice is endeavored to be given to Agent (but only if the applicable carrier provides such written notice to its customers' lenders generally, and, to the extent it does not, Credit Parties shall promptly (but in any event within three (3) Business Days) provide Agent with written notice of any cancellation, amendment or termination after an Authorized Officer of the Borrowing Agent obtains knowledge thereof from such carrier). In the event of any loss relating to the Collateral upon the occurrence and during the continuation of an Event of Default, the carriers named therein hereby are directed by Agent and the applicable Credit Party to make payment for such loss to Credit Parties and Agent jointly. If any insurance losses relating to Collateral are paid by check, draft or other instrument payable to any Credit Party and Agent jointly, Agent may, upon the occurrence and during the continuation of an Event of Default, endorse such Credit Party's name thereon and do such other things as Agent may deem advisable to reduce the same to cash. Upon the occurrence and during the continuance of an Event of Default, Agent is hereby authorized to adjust and compromise claims under insurance coverage referred to in clauses (a) and (b) above. Each Credit Party shall take all actions required under the Flood Laws and/or requested by Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral (if any), including, but not limited to, providing Agent with the address and/or GPS coordinates of each structure on any Real Property that will be subject to a Mortgage in favor of Agent, for the benefit of the Secured Parties, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral, and thereafter maintaining such flood insurance in full force and effect for so long as required by the Flood Laws.

4.11. Failure to Pay Insurance. If any Credit Party fails to obtain insurance as hereinabove provided, or to keep the same in force, Agent, if Agent so elects, may obtain such insurance and pay the premium (but only after first providing Borrowing Agent with notice and one (1) Business Day to cure the same) therefor on behalf of such Credit Party, and charge Borrowers' Account therefor as an Advance of a Domestic Rate Loan and such expenses so paid shall be part of the Obligations. Failure or delay on the part of Agent to provide notice pursuant to this section shall not constitute a waiver of Agent's rights and remedies hereunder, other than as qualified in this Section 4.11.

4.12. Payment of Taxes. Each Credit Party will pay, when due and payable, all material federal income tax and all other material Taxes, including without limitation, federal, state, local and foreign (if applicable) Taxes and all other material franchise, income, employment, social security benefits, withholding and sales Taxes, lawfully levied or assessed upon such Credit Party or any of the Collateral including real and personal property Taxes, unless the same are being Properly Contested. If any Taxes are delinquent, or if any claim shall be made which creates a valid Lien on the Collateral (other than Permitted Encumbrances), Agent may, but shall not be required to, pay the Taxes and each Credit Party hereby indemnifies and holds Agent and each Lender harmless in respect thereof. Agent will not pay any Taxes to the extent that any applicable Credit Party has Properly Contested such Taxes and provided notice of same to Agent. The amount of any payment by Agent under this Section 4.12 shall be charged to Borrowers' Account as an Advance maintained as a Domestic Rate Loan and added to the Obligations and, until Credit Parties shall furnish Agent with an indemnity therefor (or supply Agent with evidence satisfactory to Agent in its Permitted Discretion that due provision for the payment thereof has been made), Agent may hold without interest any balance standing to Credit Parties' credit and Agent shall retain its security interest in and Lien on any and all Collateral held by Agent. Failure or delay

on the part of Agent to provide notice pursuant to this section shall not constitute a waiver of Agent's rights and remedies hereunder, other than as qualified in this Section 4.12.

4.13. Payment of Leasehold Obligations. Each Borrower shall at all times pay, when and as due and payable, its rental obligations under all Leasehold Interests under which it is a tenant, and shall otherwise comply, in all material respects, with all other terms of such leases and keep all such leases in full force and effect (unless it would be prudent not to keep such leases in full force and effect in the exercise of Borrower's reasonable business judgment).

4.14. Receivables.

(a) Nature of Receivables. Each of the Receivables at any time reported to Agent (whether pursuant to Section 9.2 or otherwise) shall, except as noted therein, be a bona fide and valid account representing a bona fide indebtedness incurred by the Customer therein named, for a fixed sum (subject to customary discounts or reductions permitted in the ordinary course of business and in accordance with past practices) as set forth in the invoice relating thereto (*provided* immaterial or unintentional invoice errors shall not be deemed to be a breach hereof) with respect to an absolute sale or lease and delivery of goods upon stated terms of a Credit Party, or work, labor or services theretofore rendered by a Credit Party as of the date each Receivable is created. Same shall be due and owing in accordance with the applicable Credit Party's standard terms of sale without dispute, setoff or counterclaim except as may be stated on the accounts receivable schedules delivered by the Credit Parties to Agent.

(b) Location of Credit Parties. Each Credit Party's chief executive office address are as set forth on Schedule 4.14(b) and Schedule 3 to the Perfection Certificate and each other location of books and records pertaining to Receivables are as set forth on Schedules 1, 3 or 11 to the Perfection Certificate.

(c) [Reserved].

(d) Notification of Assignment of Receivables. At any time upon the occurrence and during the continuation of an Event of Default, Agent shall have the right to send notice of the assignment of, and Agent's security interest in and Lien on, the Receivables to any and all Customers or any third party holding or otherwise concerned with any of the Collateral. Thereafter, subject to any applicable order of the Bankruptcy Court, Agent shall have the sole right to collect the Receivables, take possession of the Collateral, or both. Upon the occurrence and during the continuance of an Event of Default, Agent's actual collection expenses, including, but not limited to, stationery and postage, telephone and telegraph, secretarial and clerical expenses and the salaries of any collection personnel used for collection, may be charged to the Credit Parties' account and added to the Obligations.

(e) Power of Agent to Act on Credit Parties' Behalf. Upon and during the continuance of an Event of Default, Agent shall have the right to receive, endorse, assign and/or deliver in the name of Agent or any Credit Party any and all checks, drafts and other instruments for the payment of money relating to the Receivables, and each Credit Party hereby waives notice of presentment, protest and non-payment of any instrument so endorsed. Each Credit Party hereby constitutes Agent or Agent's designee as such Credit Party's attorney with power (i) to endorse such Credit Party's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment or Collateral upon and during the continuance of an Event of Default; (ii) to sign such Credit Party's name on any invoice or bill of lading relating to any of the Receivables, drafts against Customers, and assignments of Receivables, upon and during the continuance of an Event of Default; (iii) to send verifications of Receivables to any Customer (provided that, so long as no Event of Default has occurred and is continuing, Agent shall only conduct verifications of Receivables over the phone with participation from Credit Parties or with Credit Parties being present); (iv) to sign such Credit Party's name on any documents or instruments deemed necessary or appropriate by Agent to preserve, protect, or perfect Agent's interest in the Collateral and to file same upon and during the continuance of an Event of Default; (v) to demand payment of the Receivables upon and during the continuance of an Event of Default; (vi) to enforce payment of the

Receivables by legal proceedings or otherwise upon and during the continuance of an Event of Default; (vii) to exercise all of such Credit Party's rights and remedies with respect to the collection of the Receivables and any other Collateral upon and during the continuance of an Event of Default; (viii) to settle, adjust, compromise, extend or renew the Receivables upon and during the continuance of an Event of Default; (ix) to settle, adjust or compromise any legal proceedings brought to collect Receivables upon and during the continuance of an Event of Default; (x) to prepare, file and sign such Credit Party's name on a proof of claim in bankruptcy or similar document against any Customer upon and during the continuance of an Event of Default; (xi) to prepare, file and sign such Credit Party's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables upon and during the continuance of an Event of Default; (xii) to receive, open and dispose of all mail addressed to any Credit Party to the extent such actions are taken in connection with operation and administration of Credit Parties' lockboxes or otherwise in connection with treasury management services; and (xiii) upon and during the continuance of an Event of Default, to do all other acts and things necessary to carry out this Agreement. All acts of said attorney or designee are hereby ratified and approved, and said attorney or designee shall not be liable for any acts of omission or commission nor for any error of judgment or mistake of fact or of law, unless constituting willful misconduct or gross negligence (as determined by a court of competent jurisdiction in a final non-appealable judgment); this power being coupled with an interest is irrevocable while any of the Commitments or Obligations remain outstanding. Agent shall have the right at any time following the occurrence and during the continuation of an Event of Default, to change the address for delivery of mail addressed to any Credit Party to such address as Agent may designate and to receive, open and dispose of all mail addressed to any Credit Party.

(f) No Liability. Neither Agent nor any Lender shall, under any circumstances or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Receivables or any instrument received in payment thereof, or for any damage resulting therefrom, except for the gross negligence or willful misconduct of the Agent as determined by a final and non-appealable judgment of a court of competent jurisdiction. Upon the occurrence and during the continuation of an Event of Default, Agent may, without notice or consent from any Credit Party, sue upon or otherwise collect, extend the time of payment of, compromise or settle for cash, credit or upon any terms any of the Receivables or any other securities, instruments or insurance applicable thereto and/or release any obligor thereof. Agent is authorized and empowered to accept, upon the occurrence and during the continuation of an Event of Default, the return of the goods represented by any of the Receivables, without notice to or consent by any Credit Party, all without discharging or in any way affecting any Credit Party's liability hereunder.

(g) Cash Management.

(i) The Interim Order (or the Final Order, when applicable) shall grant Agent (on behalf of the Secured Parties) a validly perfected first priority Lien on each Collection Account. As of the Closing Date, each Credit Party shall have delivered a Deposit Account Control Agreement, in form and substance satisfactory to Agent in its Permitted Discretion with respect to each Collection Account; provided, that the parties hereto acknowledge and agree that the Deposit Account Control Agreements executed in connection with the Pre-Petition Credit Agreement shall be sufficient for purposes of satisfying the obligation described in this Section 4.14(g)(i). The Cash Management Order shall direct each Credit Party to and each Credit Party shall cause all proceeds of Collateral, including without limitation, Receivables (including all cash, checks, drafts or other similar items of payment) received by such Credit Party each day to be deposited into a Collection Account Neither Agent nor any Lender assumes any responsibility for such collection account arrangement, including any claim of accord and satisfaction or release with respect to deposits accepted by any bank maintaining a Collection Account.

(ii) Notwithstanding anything to the contrary herein or in any Other Document, Credit Parties shall ensure that Agent does not receive, whether by deposit to the Collection Accounts or otherwise, any funds from any Customer located in a Sanctioned Country.

(h) Adjustments. No Credit Party will, without Agent's consent, compromise or adjust any material amount of the Receivables (or extend the time for payment thereof) or accept any material returns of merchandise or grant any additional discounts, allowances or credits thereon except for those compromises, adjustments, returns, discounts, credits and allowances as have been granted in the ordinary course of business of such Borrower.

4.15. Inventory. To the extent Inventory held for sale or lease has been produced by any Borrower, it has been and will be produced, in all material respects, by such Borrower in accordance with the Federal Fair Labor Standards Act of 1938.

4.16. Maintenance of Equipment. The Equipment useful and necessary to Credit Parties' business shall be maintained in good operating condition and repair (reasonable wear and tear and casualty excepted) and all necessary replacements of and repairs thereto shall be made so that the value and operating efficiency of the Equipment shall be maintained and preserved consistent with industry standards; provided that the same shall not be required if not necessary for the continued operation of the Credit Parties' business. No Credit Party shall use or operate the Equipment in violation of any Applicable Law to the extent such use or operation could reasonably be expected to materially and adversely affect the operation of its business as currently conducted.

4.17. Exculpation of Liability. Nothing herein contained shall be construed to constitute Agent or any Lender as any Borrower's agent for any purpose whatsoever, nor shall Agent or any Lender be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the Collateral wherever the same may be located and regardless of the cause thereof, except for the gross negligence or willful misconduct of the Agent as determined by a final and non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any Lender, whether by anything herein or in any assignment or otherwise, assume any of any Borrower's obligations under any contract or agreement assigned to Agent or such Lender, and neither Agent nor any Lender shall be responsible in any way for the performance by any Borrower of any of the terms and conditions thereof.

4.18. Environmental Matters.

(a) Except for any deviations, individually or in the aggregate, that could not reasonably be expected to have a Material Adverse Effect:

(i) Borrowers shall maintain the Real Property owned or leased by a Borrower in compliance with all Environmental Laws and the Borrowers shall not place or permit to be placed any amount of Hazardous Substances on any Real Property except as permitted by Applicable Law, permits issued thereunder;

(ii) Borrowers shall comply with all applicable Environmental Laws which shall include periodic reviews of such compliance;

(iii) Borrowers shall dispose of any and all Hazardous Waste generated at the Real Property only at facilities and with carriers that maintain valid permits under RCRA and any other applicable Environmental Laws; and

(iv) Borrowers shall use commercially reasonable efforts to obtain certificates of disposal, such as hazardous waste manifest receipts, from all treatment, transport, storage or disposal facilities or operators employed by Borrowers in connection with the transport or disposal of any Hazardous Waste generated at the Real Property as required by Environmental Laws.

(b) In the event any Credit Party or any of their respective Subsidiaries obtains, gives or receives written notice of any Release or threat of Release of a reportable quantity of any Hazardous Substances at the Real Property (any such event being hereinafter referred to as a "Hazardous Discharge") or receives any notice

of violation, request for information or notification that it is potentially responsible for investigation or cleanup of environmental conditions at the Real Property, demand letter or complaint, order, citation, or other written notice, in each case, with regard to any Hazardous Discharge or violation of Environmental Laws affecting the Real Property or such Borrower's interest therein that could reasonably be expected to have a Material Adverse Effect (any of the foregoing received by any Borrower is referred to herein as an "Environmental Complaint") from any Person, including any state agency responsible in whole or in part for environmental matters in the state in which the Real Property is located or the United States Environmental Protection Agency (any such person or entity hereinafter the "Authority"), then such Borrower shall, within one (1) Business Day, give written notice of same to Agent detailing facts and circumstances of which such Borrower is aware giving rise to the Hazardous Discharge or Environmental Complaint. Such information is to be provided to allow Agent to protect its security interest in and Lien on the Real Property and the Collateral and is not intended to create nor shall it create any obligation upon Agent or any Lender with respect thereto.

(c) Borrowers shall respond promptly in accordance with Environmental Laws to any material Hazardous Discharge or Environmental Complaint and, with respect to same, shall take all actions required by applicable Environmental Law to protect the health and safety of Persons and the environment and to avoid subjecting the Collateral or Real Property to any Lien other than Permitted Encumbrances. If any Borrower shall fail to respond in all material respects promptly to any Hazardous Discharge or Environmental Complaint or any Borrower shall fail to comply with any of the material requirements of any Environmental Laws, Agent on behalf of Lenders may, but without the obligation to do so, for the sole purpose of protecting Agent's interest in the Collateral: (i) give such notices as may be required by Environmental Laws or (ii) enter onto the Real Property (or authorize third parties to enter onto the Real Property) and take such actions as Agent (or such third parties as directed by Agent) deems reasonably necessary, to clean up, remove, mitigate or otherwise deal with any such Hazardous Discharge or Environmental Complaint; provided however that prior to taking any such action set forth on subpart (i) or (ii), Agent shall provide one (1) Business Day's advance written notice to Borrowing Agent and a reasonable time to cure or address such Hazardous Discharge or Environmental Complaint. All reasonable costs and expenses incurred by Agent and Lenders (or such third parties) in the exercise of any such rights, including any sums paid in connection with any judicial or administrative investigation or proceedings, fines and penalties, together with interest thereon from the date expended at the Default Rate for Domestic Rate Loans constituting Advances shall be paid upon demand by Borrowers, and until paid shall be added to and become a part of the Obligations secured by the Liens created by the terms of this Agreement or any other agreement between Agent, any Lender and any Borrower.

(d) Borrowers shall defend and indemnify Agent and Lenders and hold Agent, Lenders and their respective employees, agents, directors and officers harmless from and against all loss, liability, damage and expense, claims, costs, fines and penalties, including attorney's fees, actually suffered or incurred by Agent or Lenders under or on account of any Environmental Laws, including the assertion of any Lien thereunder, with respect to any Hazardous Discharge, the presence of any Hazardous Substances affecting the Real Property, whether or not the same originates or emerges from the Real Property or any contiguous real estate, including any loss of value of the Real Property as a result of the foregoing except to the extent such loss, liability, damage and expense is attributable to (A) any Hazardous Discharge resulting from actions on the part of Agent or any Lender or (B) any act or inaction of Agent or any Lender that constitutes gross negligence or willful misconduct. Borrowers' obligations under this Section 4.18(d) shall arise upon the discovery of the presence of any Hazardous Substances at the Real Property, whether or not any Governmental Body has taken or threatened any action in connection with the presence of any Hazardous Substances. Borrowers' obligation and the indemnifications hereunder shall survive the termination of this Agreement.

(e) For purposes of Section 4.18 and 5.7, all references to Real Property shall be deemed to include all of each Borrower's right, title and interest in and to its owned and leased premises.

4.19. [Reserved].

4.20. Voting Rights in Respect of Subsidiary Stock. Upon the occurrence and during the continuance of an Event of Default, subject to any applicable order of the Bankruptcy Court, and following written notice by Agent to Borrowing Agent, all rights of a Credit Party to exercise the voting and other consensual rights which it would otherwise be entitled to exercise shall cease and all such rights shall thereupon become vested in Agent which shall then have the sole right to exercise such voting and other consensual rights.

4.21. Dividend and Distribution Rights in Respect of Subsidiary Shares. Upon the occurrence and during the continuation of an Event of Default, subject to any applicable order of the Bankruptcy Court, and following written notice by Agent to Borrowing Agent:

(a) all rights of a Credit Party to receive dividends, distributions and interest payments shall cease and all such rights shall thereupon be vested in Agent which shall then have the sole right to receive and hold such dividends, distributions and interest payments; provided, however that any and all such dividends, distributions and interest payments consisting of rights or interests in the form of securities shall be forthwith delivered to Agent to hold as Collateral and shall, if received by any Credit Party, be received in trust for the benefit of Agent, be segregated from the other property or funds of such Credit Party and be promptly (but in any event within five days after receipt thereof) delivered to Agent as Collateral in the same form as so received (with any necessary endorsement); and

(b) all dividends, distributions and interest payments which are received by a Credit Party contrary to the provisions of clause (a) shall be received in trust for the benefit of Agent, shall be segregated from other property or funds of such Credit Party, and shall be forthwith paid over to Agent as Collateral in the exact form received, to be held by Agent as Collateral and as further collateral security for the Obligations.

V. REPRESENTATIONS AND WARRANTIES.

Each Credit Party represents and warrants as follows:

5.1. Authority. Such Credit Party has full power, authority and legal right to enter into this Agreement and the Other Documents and to perform all its respective Obligations hereunder and thereunder. This Agreement and the Other Documents to which any Credit Party is a party have been duly executed and delivered by the Credit Parties party thereto, and, upon entry by the Bankruptcy Court of the applicable Order, this Agreement and the Other Documents constitute the legal, valid and binding obligation of the Credit Parties party thereto enforceable in accordance with their terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally. Upon entry by the Bankruptcy Court of the applicable Order, the execution, delivery and performance of this Agreement and of the Other Documents to which any Credit Party is party (a) are within each Credit Party's corporate, limited liability company, limited partnership, partnership or other applicable powers, have been duly authorized by all necessary corporate, limited liability company, limited partnership, partnership or other applicable action, are not in contravention of the terms of each Credit Party's Organizational Documents or other applicable documents relating to such Credit Party's formation or to the conduct of such Credit Party's business, (b) will not conflict with or violate (i) any Applicable Law, or (ii) any Material Contract not subject to the automatic stay of Section 362 of the Bankruptcy Code, (c) will not require the Consent of any Governmental Body or any other Person as of the Closing Date (other than those obtained or made on or prior to the Closing Date, including by the Bankruptcy Court in connection with the Cases), all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect and (d) will not result in the creation of any Lien except Permitted Encumbrances upon any asset of such Credit Party under the provisions of any Applicable Law, Organizational Document or Material Contract to which such Credit Party is a party or by which it or its property is a party or by which it may be bound.

5.2. Formation and Qualification.

(a) On the Closing Date, each Credit Party is duly incorporated or formed, as applicable and in good standing under the laws of the state listed on Schedule 5.2(a) and is qualified to do business and is in good standing in the states listed on Schedule 5.2(a), as applicable. Each Credit Party is in good standing and is qualified to do business in the jurisdictions in which qualification and good standing are necessary for such Credit Party to conduct its business and own its property and where the failure to so qualify could reasonably be expected to have a Material Adverse Effect.

(b) As of the Closing Date, the Persons identified on Schedule 5.2(b) are the record and beneficial owners of all of the shares of Capital Stock of each Credit Party, other than the Parent Guarantor, as being owned thereby, there are no proxies, irrevocable or otherwise, with respect to such shares, and no equity securities of any of such Persons are or may become required to be issued by reason of any options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable for, shares of any Capital Stock of any such Person, and there are no contracts, commitments, understandings or arrangements by which any such Person is or may become bound to issue additional shares of its Capital Stock or securities convertible into or exchangeable for such shares. All of the shares owned by the Credit Parties are owned free and clear of any Liens other than Permitted Encumbrances.

5.3. Survival of Representations and Warranties. All representations and warranties of the Credit Parties contained in this Agreement and the Other Documents shall, at the time of such Credit Party's execution of this Agreement and the Other Documents, be true and correct in all material respects (or, if such representation and warranty is, by its terms, limited by materiality (including a Material Adverse Effect), then such representation and warranty shall be true in all respects) and shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

5.4. Tax Returns. The federal taxpayer identification number of each Credit Party that is a Credit Party as of the Closing Date is set forth on Schedule 1 to the Perfection Certificate. The Credit Parties have filed all federal and state income Tax returns and all other material federal, state and local Tax returns and other reports they are required by law to file and have paid all material Taxes that are due and payable. The provision for Taxes on the books of the Credit Parties have been made in accordance with GAAP and the Credit Parties have no knowledge of any deficiency or additional assessment in connection therewith not provided for on its books.

5.5. Financial Statements.

(a) Historical Statements. The Parent Guarantor and its Subsidiaries have delivered to the Agent copies of (i) [reserved] and (ii) its unaudited balance sheet, statements of income and stockholders' equity and cash flows on a consolidated and consolidating basis as of March 31, 2019 (the "Historical Statements"). The Historical Statements were compiled from the books and records maintained by management of the Parent Guarantor and its Subsidiaries, are correct and complete in all material respects and fairly represent the consolidated and consolidating financial condition of the Parent Guarantor and its Subsidiaries as of their dates and their results of operations and cash flows for the fiscal periods specified and have been prepared in accordance with GAAP consistently applied, except that the unaudited financial statements are subject to normal year-end adjustments.

(b) Approved Budget. The Borrowers have heretofore furnished to the Agent the Approved Budget, such Approved Budget was prepared in good faith upon assumptions the Borrowers believe to be reasonable assumptions. To the knowledge of Borrowers, no facts exist that (individually or in the aggregate) would result in any material change in the Approved Budget. Borrowers shall thereafter deliver to Agent updates to the Approved Budget in accordance with Section 6.11.

(c) No Material Adverse Effect. Other than with respect to the Cases, since December 31, 2018, there has been no change, occurrence or development which could reasonably be expected to have a Material Adverse Effect.

5.6. Use of Proceeds. The Borrowers are using the proceeds of the Advances in accordance with Section 2.12.

5.7. O.S.H.A.; Environmental Compliance; Flood Laws. Except as could, individually or in the aggregate, not reasonably be expected to have a Material Adverse Effect:

(a) The Credit Parties are and have been in compliance with, and their facilities, business, assets, property, leaseholds, Real Property and Equipment are and have been in compliance with, the provisions of the Federal Occupational Safety and Health Act, RCRA, the Federal Occupational Safety and Health Act, the Federal Mine Safety and Health Act, Flood Laws and all other Environmental Laws, including, without limitation, any provisions relating to financial assurance, reclamation or decommissioning obligations, and, to the knowledge of the Credit Parties, the obligations of the Credit Parties to maintain compliance with the Federal Occupational Safety and Health Act and all Environmental Laws will not have a Material Adverse Effect.

(b) The Credit Parties have been issued or obtained all required federal, state and local licenses, certificates or permits relating to all applicable Environmental Laws.

(c) (i) There have been no releases, spills, discharges, leaks or disposal (collectively referred to as “Releases”) of Hazardous Substances (as defined at the time of the representation) at, upon, under or within any Real Property, except as authorized by any permit or certificate issued pursuant to Environmental Law; (ii) there are no underground storage tanks or polychlorinated biphenyls on the Real Property except those kept in amounts and under circumstances in compliance with Environmental Laws (in effect at the time of the representation); (iii) the Real Property has never been used as a treatment, storage or disposal facility of Hazardous Substances, except as previously disclosed to Agent; and (iv) no Hazardous Substances (as defined at the time of the representation) are handled or stored on the Real Property, excepting such quantities as are handled in accordance with all applicable governmental regulations and in proper storage containers as required by Environmental Laws and as are necessary for the operation of the business of any Credit Party or of its tenants.

(d) The Credit Parties have not received any Environmental Complaint that has not been fully resolved.

(e) All Real Property owned by Credit Parties is insured pursuant to policies and other bonds which are valid and in full force and effect and which provide adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of each such Credit Party in accordance with prudent business practice in the industry of such Credit Party.

5.8. [Reserved].

5.9. Litigation. No Credit Party has any pending against, or to the knowledge of the Credit Parties, threatened litigation, arbitration, actions or proceedings, which (i) purport to affect or pertain to this Agreement or any Other Document or any of the Transactions or (ii) other than the filing of the Cases, could reasonably be expected to (x) have a Material Adverse Effect, (y) materially and adversely affect such Credit Party’s ability to conduct its business as currently conducted or (z) other than as set forth on Schedule 5.9(ii)(z), result in material liability to such Credit Party.

5.10. Compliance with Laws; ERISA.

(a) No Credit Party is in violation of any applicable statute, law, rule, regulation or ordinance in any respect which could reasonably be expected to have a Material Adverse Effect, nor is any Credit Party in

violation of any order of any court, Governmental Body or arbitration board or tribunal which could reasonably be expected to have a Material Adverse Effect, nor is any Credit Party in violation of the applicable Order. The Borrowers have implemented and maintained in effect policies and procedures designed to ensure compliance by the Borrowers, their Subsidiaries and their respective directors, officers, employees and agents with applicable Anti-Terrorism Laws.

(b) As of the Closing Date and as of the end of each fiscal quarter thereafter, no Credit Party or any member of the Controlled Group maintains or is required to contribute to any Plan other than those listed on Schedule 5.10(b) hereto with respect to which any Credit Party or any member of the Controlled Group has incurred or may incur any material liability. Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Applicable Law. Except as could not reasonably result in Material Adverse Effect or an Event of Default or result in material liability to any Credit Party: (i) each Borrower and each member of the Controlled Group has met all applicable minimum funding requirements under Section 302 of ERISA and Section 412 of the Code in respect of each Plan and each Plan is in compliance with Sections 412, 430 and 436 of the Code and Sections 206(g), 302 and 303 of ERISA, without regard to waivers and variances; (ii) each Plan which is intended to be a qualified plan under Section 401(a) of the Code as currently in effect has been determined by the IRS to be qualified under Section 401(a) of the Code and the trust related thereto is exempt from federal income Tax under Section 501(a) of the Code or an application for such a determination is currently being processed by the IRS; (iii) neither any Credit Party nor any member of the Controlled Group has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due which are unpaid; (iv) no Plan has been terminated by the plan administrator thereof nor by the PBGC, and there is no occurrence which would cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Plan; (v) the current value of the assets of each Plan exceeds the present value of the accrued benefits and other liabilities of such Plan and neither any Credit Party nor any member of the Controlled Group knows of any facts or circumstances which would change the value of such assets and accrued benefits and other liabilities; (vi) neither any Credit Party nor any member of the Controlled Group has breached any of the responsibilities, obligations or duties imposed on it by ERISA with respect to any Plan; (vii) neither any Credit Party nor any member of the Controlled Group has incurred any liability for any excise Tax arising under Section 4971, 4972 or 4980B of the Code, and no fact exists which could give rise to any such liability; (viii) neither any Credit Party nor any member of the Controlled Group nor any fiduciary of, nor any trustee to, any Plan, has engaged in a "prohibited transaction" described in Section 406 of ERISA or Section 4975 of the Code nor taken any action which would constitute or result in a Termination Event with respect to any such Plan which is subject to ERISA; (ix) no Termination Event has occurred or is reasonably expected to occur; (x) there exists no Reportable Event; (xi) neither any Credit Party nor any member of the Controlled Group has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; (xii) neither any Credit Party nor any member of the Controlled Group maintains or is required to contribute to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code; (xiii) neither any Credit Party nor any member of the Controlled Group has withdrawn, completely or partially, within the meaning of Section 4203 or 4205 of ERISA, from any Multiemployer Plan so as to incur liability under the Multiemployer Pension Plan Amendments Act of 1980 and there exists no fact which would reasonably be expected to result in any such liability; and (xiv) no Plan fiduciary (as defined in Section 3(21) of ERISA) has any liability for breach of fiduciary duty or for any failure in connection with the administration or investment of the assets of a Plan.

5.11. Patents, Trademarks, Copyrights and Licenses. All registered trademarks, trademark applications, patents, patent applications, copyright and copyright applications and all licenses for intellectual property held on the Closing Date by any Credit Party which are material to the conduct of any Borrower's business are set forth on Schedule 7 to the Perfection Certificate. All of the owned or, to the knowledge of the Credit Parties, licensed, intellectual property set forth on Schedule 7 to the Perfection Certificate (a) is valid and enforceable by the Credit Party claiming ownership thereof, (b) with respect to such owned intellectual property, have been duly registered or filed with all appropriate Governmental Bodies and (c) constitute all of the intellectual property rights which are material to the conduct of each Borrower's business as presently conducted or anticipated to be conducted. To the knowledge of any Authorized Officer of any Credit Party there is no

objection or pending challenge to the validity of any such intellectual property and there are no grounds for any such challenge, except, in each case, as could not reasonably be expected to have a Material Adverse Effect or an Event of Default, result in material liability to such Credit Party or materially and adversely affect such Credit Party's ability to conduct its business as currently conducted.

5.12. Licenses and Permits. Except as set forth in Schedule 5.12, each Credit Party (a) is in compliance with and (b) has procured and is now in possession of, all material licenses or permits required by any Applicable Law for the operation of its business in each jurisdiction wherein it is now conducting or proposes to conduct business, except, in the cases of both (a) and (b) where the failure to procure such licenses or permits would not reasonably be expected to have a Material Adverse Effect or an Event of Default, result in material liability to such Credit Party or materially and adversely affect such Credit Party's ability to conduct its business as currently conducted.

5.13. No Burdensome Restrictions. No Credit Party is a party to any contract or agreement the performance of which could reasonably be expected to have a Material Adverse Effect or materially and adversely affect such Credit Party's ability to comply with the terms of this Agreement. All Material Contracts as of the Closing Date are set forth on Schedule 13 to the Perfection Certificate, and the Credit Parties have heretofore delivered to Agent true and complete copies of all such Material Contracts to which any of them are a party or to which any of them or any of their properties is subject. Except as set forth on Schedule 5.13 or as otherwise approved by the Bankruptcy Court, all Material Contracts are in full force and effect and no material defaults by any Borrower and, to the knowledge of the Borrowers, by any other party thereto, currently exist thereunder other than as a result of the Cases. No Credit Party has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien which is not a Permitted Encumbrance.

5.14. No Labor Disputes. No Credit Party is involved in any labor dispute; there are no strikes or walkouts or union organization of any Credit Party's employees threatened or in existence and no labor contract is scheduled to expire prior to the Maturity Date other than as set forth on Schedule 5.14 hereto, which, in each case, could reasonably be expected to result in a Material Adverse Effect or an Event of Default or materially and adversely affect such Credit Party's ability to conduct its business as currently conducted.

5.15. Margin Regulations. No Credit Party is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. No part of the proceeds of any Advance will be used for "purchasing" or "carrying" "margin stock" as defined in Regulation U of such Board of Governors.

5.16. Investment Company Act. No Credit Party is an "investment company" as defined in, and registered or required to be registered under, the Investment Company Act of 1940, nor is it controlled by such a company.

5.17. Disclosure. No representation or warranty made by any Credit Party in this Agreement or in any financial statement, report, certificate or any other document furnished in connection herewith or therewith, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not materially misleading in light of the circumstances under which the statements were made; provided, that with respect to projected financial information, and information of an industry specific or general economic nature, the Credit Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time in light of conditions and facts then known; it being understood that (i) such projections are subject to significant uncertainties and contingencies, many of which are beyond the Parent Guarantor's control, and (ii) actual results may vary from such projections and that such variances may be material. There is no fact known to any Credit Party or which reasonably should be

known to such Credit Party which such Credit Party has not disclosed to Agent in writing with respect to the Transactions which could reasonably be expected to have a Material Adverse Effect.

5.18. DIP Credit Financing. This Agreement constitutes a “DIP Financing” for the purposes of and as defined in the First Lien/Second Lien Intercreditor Agreement, and satisfies the DIP Financing Conditions (as defined in the First Lien/Second Lien Intercreditor Agreement).

5.19. Swaps. No Credit Party is a party to, nor will it be a party to, any swap agreement whereby such Credit Party has agreed or will agree to swap interest rates or currencies unless same provides that damages upon termination following an event of default thereunder are payable on an unlimited “two-way basis” without regard to fault on the part of either party.

5.20. Application of Certain Laws and Regulations. Neither any Credit Party nor any Subsidiary of any Credit Party is subject to any Law which regulates the incurrence of any Indebtedness, including Laws relative to common or interstate carriers or to the sale of electricity, gas, steam, water, telephone, telegraph or other public utility services.

5.21. No Brokers or Agents. No Credit Party or Subsidiary thereof uses any brokers or other agents acting in any capacity for such Credit Party or Subsidiary in connection with the Obligations.

5.22. Commercial Tort Claims. As of the Closing Date and as of the end of any fiscal quarter thereafter, none of the Credit Parties has any commercial tort claims in excess of \$100,000, except as set forth on Schedule 12 to the Perfection Certificate.

5.23. Letter of Credit Rights. As of the Closing Date and as of the end of any fiscal quarter thereafter, no Credit Party has any letter of credit rights in excess of \$100,000, except as set forth on Schedule 5(b) to the Perfection Certificate.

5.24. Deposit Accounts. All deposit accounts and securities accounts of the Credit Parties as of the Closing Date are set forth on Schedule 5(a) to the Perfection Certificate.

5.25. [Reserved].

5.26. Second Lien Documents. As of the Closing Date, the Borrowing Agent has provided to the Agent true and complete copies of all of the Second Lien Note Documentation in effect as of such date.

5.27. Personal Properties. The Parent Guarantor and each Restricted Subsidiary has good title to, or valid leasehold interests in, all such personal property material to its business, except for (i) minor defects in title that do not, in the aggregate, interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes and (ii) Permitted Encumbrances.

5.28. No Default. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement.

5.29. Real Property. Each Credit Party has good, valid and marketable fee simple title to all owned Real Property material to its business, or that constitutes (or is required pursuant to the terms hereof to constitute) Collateral, and a valid, binding and enforceable leasehold interest in each Leasehold Interest material to its business, or that constitutes (or is required pursuant to the terms hereof to constitute) Collateral, except for (i) minor defects in title that do not, in the aggregate, interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes and (ii) Permitted Encumbrances. All Real Property and all other property material to its business, or that constitutes (or is required pursuant to the terms hereof to constitute) Collateral, is in good operating condition and repair for the use for which they are currently employed (normal wear and tear and casualty excepted and except as may be disposed of in accordance with the

terms of this Agreement) and has been maintained in accordance with industry standards and in conformity in all material respects with all Applicable Laws, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. No subleases, licenses or other occupancy agreements exist whereby any person other than any Credit Party uses or occupies or has a right to use or occupy or to acquire any Real Property (or interest in Real Property) set forth on Schedule 11 of the Perfection Certificate, including, but not limited to, rights of first refusal, rights of first offer or any option. Each Credit Party has substantially performed all of their obligations under any Real Property agreement or other occupancy agreement. There are no pending or, to the knowledge of any Credit Party, threatened condemnation or eminent domain proceedings relating to any such Real Property material to its business, or that constitutes (or is required pursuant to the terms hereof to constitute) Collateral. Each Real Property as currently used, held or occupied, and the conduct of the business thereon, as currently conducted, complies in all material respects with all deed restrictions and Applicable Laws including building codes, zoning, subdivision or other land use or similar Applicable Laws, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.30. The Cases.

(a) The Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice for (i) the motion seeking approval of this Agreement and the Other Documents and the Interim Order and Final Order, (ii) the hearing for the entry of the Interim Order, and (iii) the hearing for the entry of the Final Order has been or will be given. Credit Parties shall give, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(b) After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, and subject to the Carve-Out, the Obligations will constitute allowed administrative expense claims in the Cases having priority over all administrative expense claims and unsecured claims against the Credit Parties now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject to the priorities set forth in the Interim Order or Final Order (as applicable).

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral subject, as to priority, only to the Carve-Out and the Prior Permitted Liens.

(d) The Interim Order (with respect to the period on and after entry of the Interim Order and prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), modified or amended without Agent's consent.

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or Final Order, as the case may be, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, Agent and Lenders shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under applicable law, without further application or motion to or order or hearing by the Bankruptcy Court.

VI. AFFIRMATIVE COVENANTS.

Credit Parties (or Borrowers if otherwise indicated) shall, and shall cause their Restricted Subsidiaries (or, if indicated, all of their Subsidiaries) to, until the Termination Date:

6.1. Payment of Fees. Borrowers shall pay to Agent on demand all usual and customary fees and expenses which Agent incurs in connection with (a) the forwarding of Advance proceeds and (b) the

establishment and maintenance of any Collection Accounts as provided for in Section 4.14(g). Agent may, without making demand, charge Borrowers' Account for all such reasonable and documented fees and expenses.

6.2. Conduct of Business and Maintenance of Existence and Assets. Except as occasioned by the Cases, (a) conduct continuously and operate actively their business according to good business practices and maintain all of their properties (including each Real Property) useful or necessary in their business in good working order and condition in accordance with industry standards (reasonable wear and tear and casualty excepted and except as may be disposed of in accordance with the terms of this Agreement), including all material licenses, patents, copyrights, design rights, tradenames, domain names, trade secrets, trademarks, leases and occupancy agreements, and take all actions reasonably necessary to enforce and protect the validity of any material intellectual property right or other material right included in the Collateral; (b) keep in full force and effect their existence and comply in all material respects with the Applicable Laws governing the conduct of their business where the failure to do so could reasonably be expected to have a Material Adverse Effect, result in an Event of Default, result in material liability to such Credit Party or materially and adversely affect such Credit Party's ability to conduct its business as currently conducted; and (c) make all such reports and timely pay all such franchise and other Taxes and license fees and do all such other acts and things as may be lawfully required to maintain their rights, licenses, leases, powers and franchises under the laws of the United States or any political subdivision thereof where the failure to do so could reasonably be expected to have a Material Adverse Effect, result in an Event of Default or result in material liability to such Credit Party or Restricted Subsidiary. Each Credit Party will perform all of their obligations under any Real Property agreement, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.3. Violations. Promptly after becoming aware thereof, notify Agent in writing of any violation of any Applicable Law applicable to any Credit Party or any of its Restricted Subsidiaries or the Transactions which could reasonably be expected to have a Material Adverse Effect.

6.4. Government Receivables. At the reasonable request of Agent, take all steps necessary to protect Agent's interest in the Collateral under the Federal Assignment of Claims Act, the Uniform Commercial Code and all other Applicable Laws with respect to contracts providing for payments in excess of \$500,000 in the aggregate, and deliver to Agent, appropriately endorsed, all instruments or chattel paper connected with any Receivable arising out of contracts between any Borrower and the United States, any state or any department, agency or instrumentality of any of them; provided that the delivery requirement shall not apply to such instruments and chattel paper of up to \$500,000 in the aggregate.

6.5. Financial Covenants.

(a) Minimum Consolidated EBITDA. Maintain, when measured as of the last day of each Test Period, commencing with the fiscal quarter ending June 30, 2019, Consolidated EBITDA of the Borrowers and their Restricted Subsidiaries of no less than negative \$70,000,000.

(b) Minimum Liquidity. Cause Liquidity to be at least \$5,000,000 at all times.

6.6. Perfection: Further Assurances.

(a) Take all action that may be reasonably necessary or desirable, or that Agent may reasonably request, so as at all times to maintain the validity, perfection, enforceability and priority of Agent's security interest in and Lien on the Collateral or to enable Agent to protect, exercise or enforce its rights hereunder and in the Collateral, including, but not limited to, (i) promptly discharging all Liens other than Permitted Encumbrances, (ii) subject to any express exclusion or limitations in this Agreement or any Other Document, promptly (but in any event on the Closing Date or within 30 days after the receipt thereof if after the Closing Date and notify Agent of the receipt thereof if after the Closing Date within such 30-day period) delivering to Agent, endorsed or accompanied by such instruments of assignment as Agent may specify, and stamping or marking, in such manner as Agent may specify, any and all certificates, agreements or instruments representing

or evidencing Subsidiary Stock and chattel paper, instruments, letters of credit and advices thereof and documents evidencing or forming a part of the Collateral, (iii) entering into lockbox, blocked account or other such arrangements as required under Section 4.14(g) or any other applicable provision of this Agreement or any Other Document, (iv) subject to any express exclusion or limitations in this Agreement or any Other Document, executing and delivering financing statements, control agreements, instruments of pledge, mortgages, notices and assignments (including filings with the United States Patent and Trademark Office and United States Copyright Office), in each case in form and substance satisfactory to Agent in its Permitted Discretion, relating to the creation, validity, perfection, maintenance or continuation of Agent's security interest in and Lien on assets of the Credit Parties under the Uniform Commercial Code, the PPSA or other Applicable Law, (v) [reserved]; and (vi) otherwise providing such other documents and instruments as Agent may request, in order that the full intent of this Agreement may be carried into effect; *provided, however*, perfection of Agent's Liens on assets of the Credit Parties shall not be required where the benefits of obtaining such perfection is outweighed by the costs or burdens of providing the same, as determined by Agent. If any Credit Party shall at any time after Closing Date (i) obtain any rights to any additional Intellectual Property or (ii) become entitled to the benefit of any additional Intellectual Property or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property, or any improvement on any Intellectual Property, or if any intent-to use trademark application is no longer subject to clause (v) of the definition of "Excluded Collateral," the provisions hereof shall automatically apply thereto and any such item enumerated in the preceding clause (i) or (ii) shall automatically constitute Intellectual Property and Collateral under this Agreement and each Other Document as if such would have constituted Intellectual Property at the time of execution hereof and be subject to the Lien and security interest created by this Agreement without further action by any party. Each Credit Party shall provide to Agent written notice of any of the foregoing since the delivery of the prior Compliance Certificate (or since the Closing Date) pursuant to each Compliance Certificate delivered pursuant to Section 9.3 and on the date of delivery of such Compliance Certificate confirm the attachment of the Lien and security interest created by this Agreement to any rights described in clauses (i) and (ii) immediately above by execution of an instrument in form reasonably acceptable to Agent and the filing of any instruments or statements as shall be reasonably necessary to create, preserve, protect or perfect Agent's security interest in such Intellectual Property.

(b) Ensure that at all times on and after the Closing Date, Agent shall have received Deposit Account Control Agreements, in form and substance satisfactory to Agent in its Permitted Discretion, with respect to all accounts, other than Excluded Deposit Accounts.

6.7. Payment of Obligations. Subject to any orders of the Bankruptcy Court, pay, discharge or otherwise satisfy as the same shall become due and payable or required to be performed (subject, where applicable, to specified grace periods and, in the case of the trade payables, to normal payment practices) all their obligations and liabilities of whatever nature that accrue after the Petition Date and set forth in the Approved Budget (subject to permitted variances), subject at all times to any applicable subordination arrangement in favor of Agent and/or the Lenders.

6.8. Standards of Financial Statements. Cause all financial statements referred to in this Agreement as to which GAAP is applicable to be complete and correct in all material respects (subject, in the case of interim financial statements, to normal year-end audit adjustments) and to be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except as concurred in by such reporting accountants or officer, as the case may be, and disclosed therein).

6.9. Credit Parties' Advisors. The Credit Parties shall continue to retain the Restructuring Advisor and the Financial Advisor, and shall retain such other advisors acceptable to Agent and on terms satisfactory to Agent. The Credit Parties and their representatives will fully cooperate with the Restructuring Advisor, the Financial Advisor and any other such advisors and consultants and grant them full and complete access to the books and records of the Credit Parties and provide all such information reasonably requested.

6.10. Keepwell. If it is a Qualified ECP Credit Party, then jointly and severally, together with each other Qualified ECP Credit Party, hereby absolutely unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by any Non-Qualifying Party to honor all of such Non-Qualifying Party's obligations under this Agreement or any Other Document in respect of Swap Obligations (provided however that each Qualified ECP Credit Party shall only be liable under this Section 6.10 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 6.10, or otherwise under this Agreement or any Other Document, voidable under applicable law, including applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Credit Party under this Section 6.10 shall remain in full force and effect until the Termination Date. Each Qualified ECP Credit Party intends that this Section 6.10 constitute, and this Section 6.10 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the CEA.

6.11. Approved Budget.

(a) The use of Advances by the Credit Parties under this Agreement and the Other Documents shall be limited in accordance with the Approved Budget. The initial Approved Budget (the "Initial Approved Budget") shall depict, on a weekly basis, Budgeted Disbursement Amounts, Budgeted Cash Receipts, Budgeted Net Cash Flow and other information reasonably requested by the Agent for the first eighteen (18) week period from the Closing Date and such Initial Approved Budget shall be approved by, and in form and substance satisfactory to the Required Lenders in their sole discretion. The Initial Approved Budget shall be updated, modified or supplemented (with the written consent and/or at the request of Agent) from time to time, but in any event not less than on a weekly basis (with the delivery to Agent on or before 5:00 p.m. on Tuesday of each calendar week), commencing with the second Tuesday following the Closing Date, and each such updated, modified or supplemented budget shall be approved in writing by, and shall be in form and substance satisfactory to, the Required Lenders in their sole and absolute discretion and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed an Approved Budget for the period contemplated therein; provided, however, that in the event that Agent, on the one hand, and the Credit Parties, on the other hand, cannot agree as to an updated, modified or supplemented budget, the Approved Budget most recently approved by the Required Lenders in their sole discretion in accordance with this clause (a) shall be the budget with which the Credit Parties shall comply for purposes of using Advances made hereunder and for purposes of Section 6.11(b) hereunder and provided further that such disagreement shall give rise to an Event of Default hereunder once the period covered by the most recent Approved Budget has terminated. Each Approved Budget delivered to Agent shall be accompanied by such supporting documentation as reasonably requested by Agent. Each Approved Budget shall be prepared in good faith based upon assumptions which the Credit Parties believe to be reasonable.

(b) The Borrowers shall not permit (i) for any Prior Week, (x) the Actual Disbursement Amount for such Prior Week to exceed 110% of the Budgeted Disbursement Amount for such Prior Week, (y) Actual Net Cash Flow for such Prior Week to be less than 90% of Budgeted Net Cash Flow for such Prior Week, (ii) for any Two Week Cumulative Period (x) the Actual Disbursements for such Two Week Cumulative Period to exceed 110% of the Budgeted Disbursement Account for such Two Week Cumulative Period or (y) Actual Net Cash Flow for such Two Week Cumulative Period to be less than 90% of Budgeted Net Cash Flow for such Two Week Cumulative Period or (iii) for any Four Week Cumulative Period, (x) the Actual Disbursements for such Four Week Cumulative Period to exceed 105% of the Budgeted Disbursements for such Four Week Cumulative Period or (y) Actual Net Cash Flow for such Four Week Cumulative Period to be less than 95% of Budgeted Net Cash Flow for such Four Week Cumulative Period.

(c) The Borrower Representative shall deliver to Agent on or before 5:00 p.m. on Tuesday of each week a Budget Certificate, signed by an Authorized Officer of the Borrowing Agent certifying that (i) the Credit Parties are in compliance with the covenants contained in this Section 6.11 and (ii) no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and

any corrective action taken or proposed to be taken with respect thereto, together with an Approved Budget Variance Report.

(d) Agent and Lenders (i) may assume that the Credit Parties will comply with the Approved Budget, (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any Approved Budget. The line items in the Approved Budget for payment of interest, expenses and other amounts to Agent and the Lenders are estimates only, and the Credit Parties remain obligated to pay any and all Obligations in accordance with the terms of this Agreement and the Other Documents and the applicable Order regardless of whether such amounts exceed such estimates. Nothing in any Approved Budget shall constitute an amendment or other modification of any Other Document.

6.12. Compliance with Laws; Anti-Terrorism Law; International Trade Law Compliance.

(a) Comply with all requirements of all Laws (including applicable anti-money laundering Laws, anti-corruption Laws and Sanctions) and all orders, writs, injunctions and decrees of any Governmental Body applicable to it or to its business or property except if the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

(b) (a) No Covered Entity (i) will become a Sanctioned Person, either in its own right or through any third party; (ii) will have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person or do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; (iii) will engage in any dealings or transactions prohibited by any Anti-Terrorism Law; (iv) will use the Advances to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in any manner that would cause a violation of any Anti-Terrorism Law by any party to this Agreement; or (v) has engaged, done business with or derived income from any Sanctioned Person or Sanctioned Country in violation of any Anti-Terrorism Laws; (b) the funds and proceeds from the Advances used to repay the Obligations will not be derived from any unlawful activity; (c) each Covered Entity shall comply with all Anti-Terrorism Laws and (d) each Credit Party shall immediately notify the Agent in writing upon the occurrence of a Reportable Compliance Event.

6.13. Information Regarding Collateral.

(a) Not effect any change (i) in any Credit Party's legal name, (ii) in the location of any Credit Party's chief executive office, (iii) in any Credit Party's identity or organizational structure, (iv) in any Credit Party's Federal Taxpayer Identification Number or organizational identification number, if any, or (v) in any Credit Party's jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given Agent not less than 30 days' prior written notice (in the form of a certificate executed by any Authorized Officer of the Borrowing Agent), or such lesser notice period agreed to by Agent, of its intention so to do, and Agent shall have given written consent to such change, clearly describing such change and providing such other information in connection therewith as Agent may reasonably request and (B) it shall have taken all necessary action to maintain the perfection and priority of the security interest of Agent for the benefit of the Secured Parties in the Collateral, if applicable. Each Credit Party agrees to promptly provide Agent with certified Organizational Documents reflecting any of the changes described in the preceding sentence.

(b) Concurrently with the delivery of the Compliance Certificate pursuant to Section 9.3, deliver to Agent a supplement to the Perfection Certificate (or Perfection Certificate Supplement) most recently delivered in the form of Annex 6.13(b) to the Compliance Certificate.

6.14. Flood Insurance. The Credit Parties hereby acknowledge that if any portion of any Real Property that is subject to a mortgage is located in an area identified by the Federal Emergency Management

Agency as an area having special flood hazards and in which flood insurance has been made available under the Flood Laws, then such Credit Party shall maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount sufficient to comply with all applicable rules and regulations promulgated pursuant to such Flood Laws.

6.15. Restructuring Agreement. The Credit Parties party to the Restructuring Agreement shall remain in compliance at all times with the Restructuring Agreement.

6.16. Milestones. Unless otherwise agreed to in writing by the Agent, in its sole discretion, the Debtors shall comply with and achieve the following milestones (each, a "Milestone"):

(a) No later than the Petition Date, the Debtors shall file with the Bankruptcy Court a motion seeking approval of the DIP Facility, this Agreement, the Loans, and all fees, expenses, indemnification, and other obligations contemplated thereunder.

(b) (i) No later than August 31, 2019, the Debtors shall have filed the Annual Report on Form 10-K for the fiscal year ended December 31, 2018, (ii) no later than August 31, 2019, the Debtors shall have filed the Quarterly Report on Form 10-Q for the quarter ended March 31, 2019 and (iii) no later than September 30, 2019, the Debtors shall have filed the Quarterly Report on Form 10-Q for the quarter ended June 30, 2019, in each case, of the Parent Guarantor and its subsidiaries with the Securities and Exchange Commission. The Annual Report on Form 10-K for the fiscal year ended December 31, 2018 will include the audited consolidated financial statements of the Parent Guarantor and its subsidiaries accompanied by an opinion of its Accountants. All such reports shall have been prepared in all material respects in accordance with all of the rules and regulations applicable to such reports.

(c) On or before the date that is 3 Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order, in form and substance satisfactory to the Required Lenders in their sole and absolute discretion.

(d) On or before the date that is ten (10) calendar days after the Petition Date, the Debtors shall have prepared and filed an Approved Chapter 11 Plan and accompanying disclosure statement and solicitation procedures motion (the "Plan Filing Deadline").

(e) On or before the date that is 30 days after the Petition Date, the Bankruptcy Court shall have entered an order approving the terms of the DIP Facility on a final basis, in form and substance satisfactory to the Required Lenders in their sole and absolute discretion (the "Final Order", and together with the Interim Order, the "Orders").

(f) On or before the date that is 37 days after the Plan Filing Deadline, the Debtors shall have a hearing to approve the Disclosure Statement and solicitation procedures (the "Disclosure Statement Hearing Deadline").

(g) On or before the date that is three (3) days after the Disclosure Statement Hearing Deadline, the Bankruptcy Court shall have entered an order approving the Disclosure Statement and the Debtors shall have commenced solicitation of the Approved Chapter 11 Plan (the "Disclosure Statement Approval Deadline").

(h) On or before the date that is 60 days after the Petition Date, the Debtors shall have filed a motion seeking rejection of any railcar leases designated by the Debtors and with the consent of the Required Lenders.

(i) On or before the date that is 35 days after the Disclosure Statement Approval Deadline, the Debtors shall have a hearing in the Bankruptcy Court to seek confirmation of the Approved Chapter 11 Plan,

and an order confirming the Approved Chapter 11 Plan, in all respects acceptable to the Lenders in their sole and absolute discretion, shall have been entered by the Bankruptcy Court (the “Confirmation Deadline”).

(j) On or before the date that is the earlier of (i) 15 days after the Confirmation Deadline and (ii) 100 days after the Petition Date, the effective date of an Approved Chapter 11 Plan (the “Approved Plan Effective Date”) shall have occurred, and the Debtors shall have filed a notice of effectiveness of such Chapter 11 plan.

(k) Parent Guarantor shall make each of the filings with the Securities and Exchange Commission required by law to maintain compliance with its current registration and reporting requirements, and shall not take any action that would cause the Parent Guarantor to cease being a public reporting company under the rules and regulations of the Securities and Exchange Commission. All such filings shall have been prepared in all material respects in accordance with the rules and regulations applicable to such filings.

6.17. San Antonio Notice. The Borrowing Agent shall (i) provide prompt written notice to the Agent of any material development with respect to the San Antonio Shutdown and (ii) no later than one Business Day following the occurrence thereof, furnish to the Agent written notice of the San Antonio Operational Date.

VII. NEGATIVE COVENANTS.

Credit Parties (or Borrowers if otherwise indicated) shall not, and shall not permit their Restricted Subsidiaries (or, if indicated, any of their Subsidiaries) to, until the Termination Date:

7.1. Merger, Consolidation, Acquisition and Sale of Assets.

(a) Enter into any merger, consolidation or other reorganization with or into any other Person or acquire all or a substantial portion of the assets or Equity Interests of any Person or permit any other Person to consolidate with or merge with it, or agree to do any of the foregoing.

(b) Sell, lease, sublease, license, transfer, assign or otherwise dispose (collectively, “Dispositions”) of any of their properties or assets, or, except with respect to the Parent Guarantor, issue their own Equity Interests, except (i) Dispositions of Inventory and used, surplus or obsolete Equipment or reserves in the ordinary course of business, (ii) Dispositions permitted by the applicable Order and contemplated by the Approved Budget, (iii) Dispositions to a Credit Party of all (but not less than all) of the assets of an Inactive Subsidiary in connection with the winding down or liquidation of such Inactive Subsidiary and (iv) Dispositions permitted under Section 7.1(a), Section 7.2, Section 7.4, or Section 7.5. To the extent the Required Lenders waive the provisions of this Section 7.1 or property is sold, leased, transferred or otherwise disposed of as permitted by this Section 7.1 to a Person that is not a Credit Party, such property will be sold free and clear of any Liens in favor of Agent and Secured Parties, and the Agent shall take all actions reasonably requested by the Credit Parties to effect the foregoing subject to Agent’s receipt of certifications as to compliance with this Section in form and substance reasonably satisfactory to Agent.

7.2. Creation of Liens. Create or suffer to exist any Lien or transfer upon or against any of their property or assets now owned or hereafter acquired, except Permitted Encumbrances.

Notwithstanding the foregoing, Permitted Encumbrances (other than the Prior Permitted Liens) under this Section 7.2 shall at all times be junior and subordinate to the Liens under this Agreement and the Other Documents and the applicable Order securing the Obligations. The prohibition provided for in this Section 7.2 specifically includes any effort by any Credit Party, any official committee in any Case or any other party in interest in the Case to prime or create pari passu to any Liens or interests of (i) the Agent and the Lenders or (ii) the Prior Agent and the Prior Lenders any Lien (other than as set forth in Section 2.18 and in the applicable Order), irrespective of whether such Liens or interests may be “adequately protected.”

7.3. Guarantees. Become liable upon the obligations or liabilities of any Person by assumption, endorsement or guarantee thereof or otherwise (other than to Lenders) except (a) guarantees of Indebtedness that is permitted pursuant to Section 7.6 of another Credit Party or Restricted Subsidiary, and (b) the endorsement of checks in the ordinary course of business.

7.4. Investments. Make any Investments, except (a) obligations issued or guaranteed by the United States of America or any agency thereof that mature within one year of acquisition thereof, (b) commercial paper with maturities of not more than one hundred eighty (180) days and a published rating of not less than A-1 or P-1 (or the equivalent rating), (c) certificates of time deposit and bankers' acceptances having maturities of not more than one hundred eighty (180) days and repurchase agreements backed by United States government securities of a commercial bank if (i) such bank has a combined capital and surplus of at least \$500,000,000, or (ii) its debt obligations, or those of a holding company of which it is a Subsidiary, are rated not less than A (or the equivalent rating) by a nationally recognized investment rating agency, (d) United States money market funds at least 95% of the assets consists of Investments described in the foregoing clauses (a) through (c) (each of clauses (a) through (d), "Cash Equivalents"), (e) [reserved], (f) extensions of commercial trade credit to Customers in the ordinary course of business, (g) [reserved], (h) Investments (i) between Credit Parties (including any existing Restricted Subsidiary that becomes a Credit Party immediately after giving effect to and as a result of such Investment) and (ii) by any Restricted Subsidiary that is not a Credit Party in any other existing Restricted Subsidiary that is not a Credit Party, (i) [reserved], (j) Investments existing on the Closing Date and identified on Schedule 7.4, (k) [reserved], (l) [reserved], (m) [reserved], (n) [reserved], (o) (i) Receivables owing to the Parent Guarantor or any Restricted Subsidiary if created or acquired in the ordinary course of business, (ii) endorsements for collection or deposit in the ordinary course of business, (iii) securities, instruments or other obligations received in compromise or settlement of Receivables created in the ordinary course of business or loans permitted to be made under Section 7.4, or whether by reason of a composition or readjustment of debts or bankruptcy or reorganization of another Person, or in satisfaction claims and judgments and (iv) any asset received by way of foreclosure by the Parent Guarantor or any of its Restricted Subsidiaries with respect to any secured investment or other transfer of title with respect to any secured investment in default, (p) Investments consisting of deposits permitted under clauses (c), (d) and (h) of the definition of "Permitted Encumbrances", (q) [reserved], (r) deposits received from Customers in the ordinary course of business, (s) [reserved], (t) guarantees to the extent permitted by Section 7.3, (u) [reserved], (v) [reserved], and (w) loans made by any Subsidiary that is not a Credit Party to any Credit Party so long as such loan is subordinated to the Obligations pursuant to an agreement reasonably satisfactory to Agent; provided, that no Investment shall be made by a Credit Party unless made in accordance with the Approved Budget and Section 2.12.

7.5. Dividends and Distributions. Declare, pay or make any dividend or distribution on any of its Equity Interests or apply any of its funds, property or assets to the purchase, redemption or other retirement of any of its Equity Interests, or of any options to purchase or acquire any Equity Interests of any Credit Party or Subsidiary thereof (each a "Restricted Payment"), except:

- (a) [reserved];
- (b) [reserved];
- (c) Subsidiaries of any Borrower may declare and pay dividends and distributions to any Borrower;
- (d) [reserved];
- (e) Parent Guarantor and its Subsidiaries may, directly or indirectly, make dividends and distributions to the General Partner at such times and in such amounts as are necessary to permit the General Partner to pay (or to make a payment to any Person that owns a direct Equity Interest in the General Partner to enable it to pay) such entities' operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including, without limitation, administrative, legal, accounting, payroll and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of

business, to the extent such expenses are directly attributable to the ownership or operation of the Borrowers and their Subsidiaries; provided that, such expenses shall be detailed on a line-item basis in the Approved Budget ; and.

7.6. Indebtedness. Create, incur, assume or suffer to exist any Indebtedness except in respect of (a) the Obligations; (b) Capitalized Lease Obligations consisting of the Capital Lease of the wet sand plant located in Barron County, Wisconsin plus additional Capitalized Lease Obligations in an aggregate amount at any time outstanding not to exceed \$500,000; (c) Permitted Purchase Money Indebtedness in an aggregate amount at any time outstanding not to exceed \$500,000; (d) Indebtedness to the Prior Lenders and the Prior Agent arising under the Pre-Petition Credit Agreement and any other Pre-Petition Loan Documents; (e) Indebtedness owing to any other Credit Party or Restricted Subsidiary thereof so long as any such Indebtedness owing to any Restricted Subsidiary that is not a Credit Party is subordinated pursuant to an agreement reasonably satisfactory to Agent and; (f) guarantees permitted under Section 7.3; (g) Indebtedness existing on the Closing Date and set forth on Schedule 7.6; (h) Indebtedness in respect of workers' compensation claims, property casualty or liability insurance, and self-insurance obligations, in each case in the ordinary course of business; (i) 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, (j) Indebtedness of the Parent Guarantor or any Restricted Subsidiary consisting of the financing of insurance premiums in the ordinary course of business, (k) [reserved], (l) Indebtedness of the Parent Guarantor or any Restricted Subsidiary in connection with performance bonds, bid bonds, appeal bonds, bankers acceptances, insurance obligations, workers' compensation claims, health or other types of social security benefits, surety bonds, completion guarantees or other similar bonds and obligations, including self-bonding arrangements, issued by the Parent Guarantor or a Restricted Subsidiary in the ordinary course of business or pursuant to self-insurance obligations and in each case not in connection with the borrowing of money or the obtaining of advances, (m) [reserved], (n) the Specified Note (including any interest payable-in-kind with respect thereto) in accordance with the terms of the Specified Note and (o) the Permitted Second Lien Notes (including any interest payable-in-kind with respect thereto).

Notwithstanding the foregoing, and except for the Carve-Out, no Indebtedness under this Section 7.6 shall be permitted to have an administrative expense claim status under the Bankruptcy Code senior to or *pari passu* with the superpriority administrative expense claims of (i) the Agent and the Lenders and (ii) the Prior Agent and the Prior Lenders, in each case, as set forth herein and in the applicable Order.

7.7. Nature of Business. Engage in any businesses other than the businesses engaged by the Credit Parties and their Restricted Subsidiaries on the Closing Date and businesses that are reasonably related or ancillary thereto or reasonable extensions of such businesses or any other business or activity in the energy sector that produces "qualifying income" as such term is defined in Section 7704(d) of the Code.

7.8. Transactions with Affiliates. Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, make any payment (including payments of management or consulting fees) to, or enter into any transaction or arrangement with, or otherwise deal with, any Affiliate, except, in each case to the extent not otherwise prohibited under this Agreement or any Other Document: (a) transactions which are in the ordinary course of business, on an arm's-length basis on terms and conditions no less favorable than terms and conditions which would have been obtainable from a Person other than an Affiliate, (b) transactions among Credit Parties not involving any other Affiliates, (c) dividends or distributions permitted by Section 7.5, Indebtedness permitted by Section 7.6 and Investments permitted by Section 7.4(h)(i), (o)(i) and (w), (d) any issuance of Capital Stock (other than Disqualified Stock) of the Parent Guarantor; (e) [reserved], (f) arrangements with respect to the procurement of services of directors, officers, independent contractors, consultants or employees in the ordinary course of business and the payment of customary compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and reasonable reimbursement arrangements in connection therewith, (g) the payment of fees, expenses and indemnities to directors, officers, consultants and employees of the General Partner, the Parent Guarantor and the Restricted Subsidiaries in the ordinary course of business; (h) the payment of fees and expenses relating to the Transactions on the Closing Date as approved by the Bankruptcy Court; and (i) transactions with any

Affiliate in its capacity as a holder of Indebtedness or Capital Stock of the Parent Guarantor; provided that such Affiliate is treated the same as other such holders of Indebtedness or Capital Stock.

7.9. Subsidiaries. Form or acquire any Restricted Subsidiary on or following the Closing Date. No Restricted Subsidiary that is an Inactive Subsidiary shall cease to be an Inactive Subsidiary unless, within ten Business Days (or such longer period as Agent may consent to) after such Restricted Subsidiary ceases to be an Inactive Subsidiary: (i) if such Restricted Subsidiary is a Domestic Subsidiary, such Domestic Subsidiary expressly joins in this Agreement as a “Borrower” and becomes jointly and severally liable for the Obligations hereunder, under the Notes, and under any other agreement among any Borrower, Agent or Lenders and takes all other actions necessary or advisable in the opinion of Agent to grant a first priority perfected Lien in all of its assets to the extent required by the terms of this Agreement and each applicable Other Document, (ii) the Equity Interests of such Restricted Subsidiary are pledged to Agent to the extent constituting “Subsidiary Stock” and all certificates representing such Equity Interests, together with undated stock powers executed in blank, are delivered to Agent and (iii) in the case of clauses (i) and (ii), Agent shall have received all documents, including, without limitation, legal opinions and appraisals, it may reasonably require in connection therewith.

7.10. Fiscal Year and Accounting Changes. Change its fiscal year from December 31 or make any significant change (i) in financial accounting treatment and reporting except as required by GAAP or in the application of GAAP concurred by the Credit Parties’ Accountants, (ii) in Tax accounting method except as required by Applicable Law.

7.11. Pledge of Credit. Now or hereafter pledge Agent’s or any Lender’s credit on any purchases or for any purpose whatsoever.

7.12. Amendment of Certain Documents.

(a) Without the express prior written consent of Agent and, to the extent required, pursuant to an order of the applicable Bankruptcy Court after notice and hearing, amend, modify or waive any term or provision of its Organizational Documents (including the Partnership Agreement), the Midwest Frac Agreement or any Material Contract; *provided, however*, a Credit Party may amend its Organizational Documents to change its legal name in compliance with Section 6.13(a).

(b) [reserved].

(c) Without the express prior written consent of Agent and, to the extent required, pursuant to an order of the applicable Bankruptcy Court after notice and hearing, amend, modify or waive any term or provision of any Specified Document.

(d) Amend, modify or waive any term or provision of any Second Lien Note Documentation.

7.13. Compliance with ERISA. (i) (x) Maintain, or permit any member of the Controlled Group to maintain, or (y) become obligated to contribute, or permit any member of the Controlled Group to become obligated to contribute, to any Plan, other than those Plans disclosed on Schedule 5.10(b) for which liabilities in excess of \$250,000 could arise, which may be updated from time to time with the consent of the Agent, (ii) engage, or permit any member of the Controlled Group to engage, in any non-exempt “prohibited transaction”, as that term is defined in Section 406 of ERISA or Section 4975 of the Code, (iii) terminate, or permit any member of the Controlled Group to terminate, any Plan where such event could result in liabilities in excess of \$250,000 of any Credit Party or any member of the Controlled Group or the imposition of a lien on the property of any Credit Party or any member of the Controlled Group pursuant to Section 4068 of ERISA, (iv) incur, or permit any member of the Controlled Group to incur, any withdrawal liability in excess of \$250,000 to any Multiemployer Plan; (v) fail promptly to notify Agent of the occurrence of any Termination Event, (vi) fail to comply, or permit a member of the Controlled Group to fail to comply, with the requirements of ERISA or the Code or other Applicable Laws in respect of any Plan and such failure to comply could reasonable result in

liabilities in excess of \$250,000 to any Credit Party or any members of the Controlled Group, (vii) fail to meet, permit any member of the Controlled Group to fail to meet, or permit any Plan to fail to meet all minimum funding requirements under ERISA and the Code, without regard to any waivers or variances, or postpone or delay or allow any member of the Controlled Group to postpone or delay any funding requirement with respect to any Plan, or (viii) cause, or permit any member of the Controlled Group to cause, a representation or warranty in Section 5.10(b) to cease to be true and correct.

7.14. Prepayment of Indebtedness and Certain Other Obligations.

(a) Except pursuant to the Approved Budget, without the express prior written consent of Agent and pursuant to an order of applicable Bankruptcy Court after notice and hearing, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than the Obligations and the Prior Lender Obligations.

(b) Without limiting any other provision hereof, except pursuant to the Approved Budget, without the express prior written consent of Agent and pursuant to an order of applicable Bankruptcy Court after notice and hearing, make any payment, repurchase, redemption or transfer with respect to any Lien or Indebtedness incurred or arising prior to the Petition Date that is subject to the automatic stay provisions of the Bankruptcy Code whether by way of “adequate protection” under the Bankruptcy Code or otherwise.

(c) [Reserved].

(d) [Reserved].

(e) At any time make any payments in respect of the Midwest Frac Agreement, other than payments approved by the Bankruptcy Court and in accordance with the applicable Order and the Approved Budget.

7.15. Management Fees. Pay, or permit any of its respective Subsidiaries to pay, any management, consulting, service or other such fees to any Affiliates of any Credit Party.

7.16. Bank Accounts. Establish or otherwise acquire any deposit accounts or securities accounts, other than Excluded Deposit Accounts, without first providing to Agent an updated Schedule 5(a) to the Perfection Certificate and a Deposit Account Control Agreement with respect thereto in form and substance satisfactory to Agent in its Permitted Discretion.

7.17. Passive Holding Company. With respect to Parent Guarantor, notwithstanding anything herein to the contrary, following the Petition Date, (a) engage in any business or activity other than (i) owning the Equity Interests of the Borrowers, (ii) activities incidental or related thereto or the maintenance of the existence of Parent Guarantor or compliance with Applicable Law and legal, tax and accounting matters related thereto and activities relating to the General Partner and its employees and (iii) the making and receipt of Restricted Payments permitted pursuant to Section 7.5, (b) hold any assets other than the Equity Interests of the Borrowers, (c) have any material liabilities other than (i) Indebtedness and Guarantees of such Indebtedness under the Other Documents, the Pre-Petition Credit Agreement, the Pre-Petition Loan Documents, the Second Lien Note Purchase Agreement and the “Other Documents” (or related term) under the Second Lien Note Purchase Agreement, (ii) tax liabilities in the ordinary course of business, (iii) state and federal securities and tax filings, (iv) guarantees of Indebtedness permitted by Section 7.3, (v) obligations with respect to its Equity Interests and (vi) non-consensual obligations imposed by operation of law.

7.18. Capital Expenditures. Make, or cause to be made, any Capital Expenditures and/or capital improvements, other than payments approved by the Bankruptcy Court and in accordance with the applicable Order and, in each case, to the extent provided for in the Approved Budget.

7.19. Bankruptcy Matters.

(a) Subject to the Carve-Out, incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is *pari passu* with or senior to the claims of Agent and Lenders against the Credit Parties, except as set forth in the applicable Order.

(b) Seek, consent to, or permit to exist, without the prior written consent of Agent, any order granting authority to take any action that is prohibited by the terms of this Agreement or the Other Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the Other Documents.

(c) Assume, assume and assign or reject any lease or executory contract or unexpired leases included in the Collateral, without the prior written consent of the Agent (such consent not to be unreasonably withheld).

7.20. NYSE Listing. With respect to the Parent Guarantor, take any action that would materially affect the Parent Guarantor's ability to re-list on the New York Stock Exchange.

VIII. CONDITIONS PRECEDENT.

8.1. Conditions to Initial Advances. The effectiveness of this Agreement and the occurrence of the Closing Date is subject to the satisfaction, or waiver by Agent of the following conditions precedent, which satisfaction or waiver shall, in the case of any Advance made on the Closing Date, be immediately prior to or concurrently with the making of such Advances on the Closing Date:

(a) Documents. Agent shall have received, in form and substance reasonably satisfactory to the Agent, copies of (i) this Agreement and (ii) the Notes, each duly executed and delivered by an Authorized Officer of each Credit Party party thereto, with the original Notes to be delivered to the applicable Lender within two (2) Business Days of the Closing Date;

(b) Filings, Registrations and Recordings. (i) The Interim Order entered by the Bankruptcy Court consistently with subparagraph (v) hereof shall provide that the DIP Liens (as defined therein) are effective and perfected without the necessity of the execution, recordation of filings by the Credit Parties 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 Agent of, or over, any Collateral and (ii) each Credit Party hereby authorized the Agent to make all filings, registrations and recordations (including for the avoidance of doubt, UCC financing statements) the Agent deems necessary in order to create in favor of the Agent, for the benefit of the Secured Parties, a perfected security interest in or lien upon the Collateral;

(c) Closing Certificate. Agent shall have received a closing certificate signed by an Authorized Officer of each Credit Party dated as of the Closing Date stating that each of the conditions specified in this Section 8.1 and Section 8.2 have been satisfied, including specific certifications that (i) each of the representations and warranties made by any Credit Party in or pursuant to this Agreement or the Other Documents are true and correct in all material respects (or, if such representation and warranty is, by its terms, limited by materiality (including a Material Adverse Effect), then such representation and warranty shall be true in all respects) on and as of such date as if made on and as of such date (except to the extent any such representation or warranty specifically relates to a certain prior date), (ii) on such date no Default or Event of Default has occurred or is continuing, (iii) since the Petition Date there has been no material increase in the liabilities, liquidated or contingent, of the Borrowers and the other Credit Parties taken as a whole, or material decrease in the assets of the Borrowers and the Credit Parties taken as a whole, (iv) other than those resulting from the commencement of the Cases, since the Petition Date there has been no adverse change in the ability of

the Agent and the Lenders to enforce the Documents and the Obligations of the Borrowers and the other Credit Parties hereunder and (v) that the conditions specified in Sections 8.1(l);

(d) Proceedings of Credit Parties. Agent shall have received a copy of the resolutions in form and substance reasonably satisfactory to Agent, of the board of directors, management committee, managing member, manager or general partner, as applicable, of each Credit Party authorizing (as applicable) (i) the execution, delivery and performance of this Agreement, the Notes and any Other Documents contemplated to be delivered on the Closing Date (collectively, the “Documents”) and (ii) the granting by each Credit Party of the security interests in and liens upon the Collateral in each case certified by an Authorized Officer of each Credit Party as of the Closing Date; and, such certificate shall state that the resolutions thereby certified have not been amended, modified, revoked or rescinded as of the date of such certificate;

(e) Incumbency Certificates of Credit Parties. Agent shall have received a certificate of an Authorized Officer of each Credit Party, dated the Closing Date, as to the incumbency and signature of the officers of each Credit Party, as applicable, executing the Documents, any certificate or other documents to be delivered by it pursuant hereto, together with evidence of the incumbency of such Authorized Officer;

(f) Organizational Documents. Agent shall have received a copy of (i) the Organizational Documents of each Credit Party as in effect on the Closing Date certified, if applicable, by the Secretary of State or other appropriate official of its jurisdiction of incorporation or formation, as applicable and (ii) all agreements of each Credit Party’s shareholders or members, as applicable, and, in the case of clauses (i) and (ii), certified by an Authorized Officer of such Credit Party as accurate and complete and having not been amended, modified, revoked or rescinded as of the Closing Date;

(g) Good Standing Certificates. Agent shall have received good standing certificates for each Credit Party dated as of a recent date and in any event not more than thirty (30) days prior to the Closing Date, issued by the Secretary of State or other appropriate official of each Credit Party’s jurisdiction of incorporation or formation and each jurisdiction where the conduct of each Credit Party’s business activities or the ownership of its properties necessitates qualification;

(h) [Reserved];

(i) [Reserved];

(j) [Reserved];

(k) Budget. Agent shall have received a copy of the Initial Approved Budget;

(l) No Litigation. (i) Other than in connection with the Cases, no litigation, investigation, arbitration, action or proceeding shall be continuing, or to the knowledge of the Credit Parties, threatened against any Credit Party or against the officers or directors of any Credit Party which would reasonably be expected to have a Material Adverse Effect, or materially and adversely affect such Credit Party’s ability to conduct its business as currently conducted or other than as set forth on Schedule 5.9(ii)(z), result in a material liability to such Credit Party; and (ii) no injunction, writ, restraining order or other order of any nature materially adverse to the Credit Parties as a whole or the conduct of their business or inconsistent with the due consummation of the Transactions shall have been issued by any Governmental Body;

(m) [Reserved];

(n) Fees and Expenses. Agent shall have received all reasonable and documented out-of-pocket fees and expenses (to the extent invoiced on or prior to the Closing Date) payable to Agent and Lenders, including those set forth in the Fee Letter, on or prior to the Closing Date hereunder, including pursuant to Article III hereof;

(o) Insurance. Agent shall have received in form and substance reasonably satisfactory to Agent, certificates evidencing the Credit Parties' casualty insurance policies and any certificates evidencing flood insurance coverage, together with loss payable endorsements on Agent's standard form of lender loss payee endorsement naming Agent as lender loss payee, and certificates evidencing the Credit Parties' liability insurance policies, together with endorsements naming Agent as an additional insured;

(p) Payment Instructions. Agent shall have received written instructions from Borrowing Agent directing the application of proceeds of the Advances made on the Closing Date pursuant to this Agreement;

(q) Consents. Agent shall have received any and all Consents necessary to permit the effectuation of the Transactions;

(r) Know Your Customer. Agent shall have received such documentation and information, including but not limited to each Borrowers' IRS Form W-9 (or such other applicable tax form), as is reasonably requested in writing at least five days prior to the Closing Date by the Agent about the Credit Parties to the extent the Agent and Parent Guarantor in good faith mutually agree is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act;

(s) Petition Date. The Petition Date shall have occurred and each Debtor shall be a "debtor-in-possession" for all purposes under and with respect to the Cases;

(t) First Day Orders. All "first day orders" to be entered by the Bankruptcy Court in connection with the commencement of the Cases, including without limitation the Cash Management Order, shall have been entered in form and substance reasonably satisfactory to the Agent; it being understood and agreed that the forms of "first day orders" provided to the Agent on July [], 2019 are so satisfactory;

(u) First Day Pleadings. The Agent shall have received drafts of the "first day" pleadings for the Cases, in each case, in form and substance reasonably satisfactory to the Agent not later than a reasonable time in advance of the Petition Date in order for Agent's counsel to review and analyze the same;

(v) Interim Order. (i) The Bankruptcy Court shall have entered an Interim Order in form and substance satisfactory to the Required Lenders in their sole and absolute discretion and in form and substance substantially consistent with the form of Interim Order attached hereto as Exhibit 1.2(c), within three (3) Business Days of the Petition Date, which Interim Order has not been vacated, reversed, modified, amended or stayed without consent of the Required Lenders and is in full force and effect, (ii) all motions and other documents to be filed with and submitted to the Bankruptcy Court in connection with the DIP Facility and the approval thereof shall be in form and substance satisfactory to the Required Lenders in their sole and absolute discretion and (iii) all other orders entered by the Bankruptcy Court in the Cases related to the DIP Facility or rights of the Agent and Lenders shall be in form and substance satisfactory to the Required Lenders in their sole and absolute discretion;

(w) Cash Management. The Credit Parties shall have established or shall maintain the cash management systems described in Section 4.14(g) and the Debtors shall have taken all steps necessary to comply with the Cash Management Order, it being acknowledged by the Agent that the cash management systems as in effect under the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement are acceptable;

(x) [Reserved];

(y) Chapter 7. The Cases shall not have been dismissed or converted to a case filed under Chapter 7 of the Bankruptcy Court;

(z) Trustee or Examiner. No trustee under Chapter 7 of the Bankruptcy Code or Chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(3) and (4) of the Bankruptcy Code shall have been appointed with respect to the Debtors or their property in the Cases;

(aa) [Reserved];

(bb) Restructuring Agreement. The Restructuring Agreement shall be in full force and effect, and shall not have been terminated by the Debtors or the Consenting Creditors (as defined therein); and

(cc) Other. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the Transactions shall be satisfactory in form and substance to Agent and its counsel in the exercise of its Permitted Discretion.

8.2. Conditions to Each Advance. The agreement of Lenders to make any Advance requested to be made on any date (including the initial Advance), is subject to the satisfaction of the following conditions precedent as of the date such Advance is made:

(a) Representations and Warranties. Each of the representations and warranties made by any Credit Party in or pursuant to this Agreement or the Other Documents shall be true and correct in all material respects (or, if such representation and warranty is, by its terms, limited by materiality (including a Material Adverse Effect), then such representation and warranty shall be true in all respects) on and as of such date as if made on and as of such date (except to the extent any such representation or warranty specifically relates to a certain prior date);

(b) No Default. No Event of Default or Default shall have occurred and be continuing on such date, or would exist after giving effect to the Advances requested to be made, on such date; provided however that Agent, in its sole discretion, may continue to make Advances notwithstanding the existence of an Event of Default or Default and that any Advances so made shall not be deemed a waiver of any such Event of Default or Default;

(c) Maximum Advances. In the case of any type of Advance requested to be made, after giving effect thereto, the aggregate amount of such type of Advance shall not exceed (i) the maximum amount of such type of Advance permitted under this Agreement or (ii) the maximum amount then authorized by the applicable Order or any order modifying (without Agent's consent), reversing, staying or vacating such order shall have been entered, or any appeal of such order shall have been timely filed;

(d) Borrowing Notice. The applicable Borrower (or the Borrowing Agent on such Borrower's behalf) shall have delivered a Borrowing Notice in accordance with Section 2.2 hereof;

(e) Violations. The making of such Advance shall not violate any Applicable Law and shall not be enjoined, temporarily, preliminarily or permanently; and

(f) Order. The Interim Order or Final Order, as the case may be, 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 Required Lenders.

Each request for an Advance by Borrowers hereunder shall constitute a representation and warranty by Borrowers as of the date of such Advance that the conditions contained in this subsection shall have been satisfied.

IX. INFORMATION AS TO CREDIT PARTIES.

Each Credit Party shall, or (except with respect to Section 9.9) shall cause Borrowing Agent on its behalf to, until the Termination Date:

9.1. Disclosure of Material Matters. Promptly, following an Authorized Officer of any Borrower obtaining knowledge, report to Agent all matters materially affecting the value, enforceability or collectability of any portion of the Collateral, including any Borrower's reclamation or repossession of, or the return to any Borrower of, a material amount of goods or material claims or disputes asserted by any Customer or other obligor.

9.2. Schedules. Deliver to Agent:

(a) As soon as available and in any event no later than 5:00 p.m. on Friday of each week as and for the Prior Week as part of the Approved Budget: (i) accounts receivable ageings inclusive of reconciliations to the general ledger, (ii) an account roll forward with supporting detail, (iii) accounts payable schedules inclusive of reconciliations to the general ledger in electronic format, (iv) detailed Inventory perpetual in electronic format and (v) a cash collection report;

(b) at such intervals as Agent may require in its Permitted Discretion: (i) confirmatory assignment schedules, (ii) copies of Customer's invoices, (iii) evidence of shipment or delivery, and (iv) such further schedules, documents and/or information regarding the Collateral as Agent may require including trial balances and test verifications; and

(c) promptly upon Agent's request therefor (i) all new Material Contracts, (ii) notice of termination of any Material Contract, (iii) copies of any customer agreements, sand processing or transport agreements or fuel transport agreements and (iv) to the extent not otherwise covered by information delivered by Borrowers to Agent, a report of all modified, developed or newly acquired material intellectual property.

Agent shall have the right to confirm and verify all Receivables. The items to be provided under this Section 9.2 are to be in form reasonably satisfactory to Agent and executed by Borrowers and delivered to Agent from time to time solely for Agent's convenience in maintaining records of the Collateral, and Borrowers' failure to deliver any of such items to Agent shall not affect, terminate, modify or otherwise limit Agent's Lien with respect to the Collateral.

9.3. Compliance Certificate. Furnish Agent, concurrently with the delivery of the financial statements referred to in Section 9.8(a), with a Compliance Certificate.

9.4. Litigation. Promptly, following an Authorized Officer of any Borrower obtaining knowledge, notify Agent in writing of any claim, litigation, suit or administrative proceeding affecting any Credit Party after the Petition Date, whether or not the claim is covered by insurance, and of any litigation, suit or administrative proceeding, which in any such case affects the Collateral or which could reasonably be expected to have a Material Adverse Effect, result in an Event of Default, result in material liability to such Credit Party or materially and adversely affect such Credit Party's ability to conduct its business as currently conducted.

9.5. Material Occurrences. Promptly, following an Authorized Officer of any Borrower obtaining knowledge, notify Agent in writing upon the occurrence of (a) any Event of Default or Default; (b) any event, development or circumstance whereby any financial statements or other reports furnished to Agent fail in any material respect to present fairly, in accordance with GAAP consistently applied, the financial condition or operating results of Parent Guarantor and its Subsidiaries as of the date of such statements; (c) any accumulated retirement plan funding deficiency which, if such deficiency continued for two plan years and was not corrected as provided in Section 4971 of the Code, could subject any Credit Party to a Tax imposed by Section 4971 of the Code; (d) except as otherwise approved by the Bankruptcy Court, a breach by a Credit Party of any Material

Contract; and (e) any other development in the business or affairs of any Credit Party, which could reasonably be expected to have a Material Adverse Effect; in each case describing the nature thereof and the action such Credit Party proposes to take with respect thereto.

9.6. [Reserved].

9.7. Annual Financial Statements. Furnish Agent (for distribution to the Lenders) within one hundred twenty (120) days after the end of each fiscal year of Parent Guarantor (or in the case of the fiscal year ended December 31, 2018, no later than August 31, 2019), commencing with the fiscal year ended December 31, 2018, (i) audited consolidated and unaudited consolidating financial statements of Parent Guarantor and its Subsidiaries including, but not limited to, statements of income and stockholders' equity and cash flow from the beginning of the current fiscal year to the end of such fiscal year and the balance sheet as at the end of such fiscal year, all prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail and accompanied by a report and opinion (which report and opinion shall be prepared in accordance with generally accepted auditing standards) of the Accountants and (ii) if available and requested by the Agent, any management letters from the Accountants to Parent Guarantor or to an officer of Parent Guarantor.

9.8. Quarterly and Monthly Reporting.

(a) Furnish Agent (for distribution to the Lenders) within forty-five (45) days after the end of each fiscal quarter of each fiscal year (or in the case of the fiscal quarter ended (i) March 31, 2019, no later than August 31, 2019 and (ii) June 30, 2019, no later than September 30, 2019), commencing with the fiscal quarter ended March 31, 2019, an unaudited balance sheet of Parent Guarantor and its Subsidiaries on a consolidated and consolidating basis and unaudited statements of income and stockholders' equity and cash flow of Parent Guarantor and its Subsidiaries on a consolidated and consolidating basis reflecting results of operations from the beginning of the fiscal year to the end of such quarter and for such quarter, and a comparison against the balance sheet and the statements of income for (i) the period from the beginning of prior fiscal year to the end of the equivalent quarter in such prior fiscal year and for such equivalent quarter in the prior fiscal year, and (ii) for statements of income only, the equivalent quarter in the Financial Projections, in each case, prepared internally on a basis consistent with prior practices and complete and correct in all material respects, subject to normal and recurring year-end adjustments that are disclosed to Agent and the Lenders if, in the aggregate, they are material to Borrowers' business.

(b) Furnish Agent (for distribution to the Lenders) within thirty (30) days after the end of each month, commencing with the month ending June 30, 2019, an unaudited balance sheet of Parent Guarantor and its Subsidiaries on a consolidated and consolidating basis and unaudited statements of income and stockholders' equity and cash flow of Parent Guarantor and its Subsidiaries on a consolidated and consolidating basis reflecting results of operations from the beginning of the fiscal year to the end of such month and for such month, and a comparison against the balance sheet and the statements of income for the period from the beginning of prior fiscal year to the end of the equivalent month in such prior fiscal year and for such equivalent month in the prior fiscal year, in each case, prepared internally on a basis consistent with prior practices and complete and correct in all material respects, subject to normal and recurring year-end adjustments that are disclosed to Agent and the Lenders if, in the aggregate, they are material to Borrowers' business; it being understood and agreed that the aforementioned monthly reporting obligation shall be deemed to be satisfied by the filing of a "Monthly Operating Report" required by the Bankruptcy Court.

9.9. Additional Information. Furnish Agent promptly upon an Authorized Officer of any Credit Party's obtaining knowledge thereof, notice of any material labor dispute to which such Credit Party may become a party, any strikes or walkouts relating to any of its plants or other facilities, and the expiration of any material labor contract to which any Credit Party is a party or by which any Credit Party is bound.

9.10. [Reserved].

9.11. MD&A. Furnish Agent, upon its request, with respect to the financial statements referred to in Section 9.8, a management discussion and analysis report relating to the Borrowers.

9.12. Notice of Suits, Adverse Events. Furnish Agent written notice, within 2 Business Days of (i) an Authorized Officer of any Credit Party having knowledge thereof, any lapse or other termination of any material Consent issued to any Credit Party by any Governmental Body or any other Person that is material to the operation of such Credit Party's business, (ii) an Authorized Officer of any Credit Party having knowledge thereof, any refusal by any Governmental Body or any other Person to renew or extend any such material Consent; and (iii) filing by any Credit Party with any Governmental Body or Person, copies of any material periodic or special reports, if such reports indicate the occurrence of a Material Adverse Effect and (iv) an Authorized Officer of any Credit Party having knowledge thereof, copies of any notices and other communications from any Governmental Body or Person which specifically relate to any Credit Party and are material and adverse to a Credit Party.

9.13. ERISA Notices and Requests. Furnish Agent with immediate written notice in the event that (i) any Credit Party or any member of the Controlled Group knows or has reason to know that a Termination Event has occurred, together with a written statement describing such Termination Event and the action, if any, which such Credit Party or any member of the Controlled Group has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, Department of Labor or PBGC with respect thereto, (ii) any Credit Party or any member of the Controlled Group knows or has reason to know that a prohibited transaction (as defined in Section 406 of ERISA or 4975 of the Code) has occurred that is reasonably likely to result in a material liability to any Credit Party together with a written statement describing such transaction and the action which such Credit Party or any member of the Controlled Group has taken, is taking or proposes to take with respect thereto, (iii) a funding waiver request has been filed with respect to any Plan together with all communications received by any Credit Party or any member of the Controlled Group with respect to such request, (iv) any material increase in the benefits of any existing Plan or the establishment of any new Plan or the commencement of contributions to any Plan to which any Credit Party or any member of the Controlled Group was not previously contributing, and for which it is reasonably likely that any Credit Party may have any material liability, shall occur, (v) any Credit Party or any member of the Controlled Group shall receive from the PBGC a notice of intention to terminate a Plan or to have a trustee appointed to administer a Plan, together with copies of each such notice, (vi) any Credit Party or any member of the Controlled Group shall receive any unfavorable determination letter from the IRS regarding the qualification of a Plan under Section 401(a) of the Code pursuant to which any Credit Party has material liability, together with copies of each such letter; (vii) any Credit Party or any member of the Controlled Group shall receive a notice regarding the imposition of withdrawal liability, together with copies of each such notice; (viii) any Credit Party or any member of the Controlled Group shall fail to make a required installment or any other required payment under the Code or ERISA on or before the due date for such installment or payment; or (ix) any Credit Party or any member of the Controlled Group knows that (A) a Multiemployer Plan has been terminated, (B) the administrator or plan sponsor of a Multiemployer Plan intends to terminate a Multiemployer Plan, (C) the PBGC has instituted or will institute proceedings under Section 4042 of ERISA to terminate a Multiemployer Plan or (D) a Multiemployer Plan is subject to Section 432 of the Code or Section 305 of ERISA.

9.14. [Reserved].

9.15. Second Lien Notice. Furnish Agent (i) notice of any default or event of default under any of the Second Lien Note Documentation promptly following the earlier of (x) an Authorized Officer of any Borrower obtaining knowledge thereof and (y) any Borrower receiving notice thereof by any agent or lender under the Second Lien Note Documentation and (ii) drafts of any additional Second Lien Term Documentation to be entered into after the Closing Date a reasonable time prior to the entry thereof, and copies of such additional Second Lien Note Documentation, promptly following execution thereof.

9.16. [Reserved].

9.17. SEC Filings. Promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which Parent Guarantor, any Borrower or any Subsidiary files with the SEC or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Agent pursuant to any other Section of this Article IX.

9.18. Additional Documents. Execute and deliver to Agent, upon request, such documents and agreements as Agent may, from time to time, reasonably request (including, documents relating to the Collateral) to carry out the purposes, terms or conditions of this Agreement but excluding any “cash creation day” presentation prepared by the Borrowers.

X. EVENTS OF DEFAULT.

Notwithstanding the provisions of Section 362 of the Bankruptcy Code with respect to the Debtors and without notice, application or motion to, hearing before, or order of any Bankruptcy Court or any notice to any Credit Party, the occurrence of any one or more of the following events shall constitute an “Event of Default”:

10.1. Nonpayment.

(a) Failure by any Borrower to pay when due any principal on the Obligations (including without limitation pursuant to Section 2.17) other than Cash Management Liabilities or Hedge Liabilities on the date due;

(b) Failure by any Borrower to pay when due any interest on the Obligations within three (3) Business Days after such interest becomes due;

(c) Failure by any Borrower to pay when due any other fee, charge, amount or liability provided for herein (specifically excluding principal and interest which are addressed in subparagraphs (a) and (b) above) or in any Other Document, within the time period specified herein or therein and, if no time period is specified, then within three (3) Business Days after a demand or notice has been provided to the Borrowing Agent requesting payment of such amount;

10.2. Breach of Representation. Any representation or warranty made or deemed made by any Credit Party in this Agreement, any Other Document or any related agreement or any certificate, document or financial or other statement furnished at any time in connection herewith or therewith shall prove to have been misleading in any material respect on the date when made or deemed to have been made;

10.3. Financial Information. Failure by any Borrower to (i) furnish financial, collateral or other information when due under Article IX hereof, or if no due date is specified herein, within three (3) days after requested by Agent or (ii) permit the inspection of its books or records in accordance with this Agreement;

10.4. Judicial Actions. Other than in connection with the Cases, and orders pertaining thereto, the issuance of any Lien, levy, assessment, injunction or attachment against any Credit Party’s Inventory or Receivables with an aggregate value in excess of \$250,000 (for all such Inventory or Receivables) or against a portion of any Credit Party’s other property with a market or book value in excess of \$250,000 that is not a Permitted Encumbrance which is not stayed or lifted within thirty (30) days;

10.5. Noncompliance. Except as otherwise provided for in Sections 10.1, 10.3, 10.9, 10.12 or 10.17: (i) except as set forth in Section 10.5(iii) below, failure or neglect of any Credit Party to perform, keep or observe any term, provision, condition, covenant contained in Article IV, Article VI or Article VII of this Agreement, (ii) failure or neglect of any Credit Party to perform, keep or observe any term, provision, condition, covenant

contained in any Other Document (other than this Agreement) which is not cured within five (5) days from the earlier of (A) receipt by Borrowing Agent of written notice from Agent or the Lenders of such failure or neglect and (B) the time at which an Authorized Officer had knowledge of such failure or neglect, or (iii) failure or neglect of (A) any Credit Party to perform, keep or observe any term, provision, condition or covenant, contained in Sections 4.5, 4.6, 4.7, 4.8, 4.13, 4.14(c), 4.18, 6.3, 6.4, 6.10 or 7.9 hereof or (B) any other term, provision, condition or covenant of this Agreement to the extent not addressed in clause (i) hereof, in each case, which is not cured within five (5) days from the earlier of (X) receipt by Borrowing Agent of written notice from Agent or the Lenders of such failure or neglect and (Y) the time at which an Authorized Officer had knowledge of such failure or neglect;

10.6. Judgments. Other than in connection with the Cases, and orders pertaining thereto, any judgment or judgments are rendered against any Credit Party for an aggregate amount in excess of \$250,000 (for all such judgments), in each case to the extent not fully covered by a third party insurer and (i) enforcement proceedings shall have been commenced by a creditor upon such judgment, (ii) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, shall not be in effect, or (iii) any such judgment results in the creation of a Lien upon any of the Collateral (other than a Permitted Encumbrance);

10.7. Cases. The occurrence of any of the following in the Cases:

(a) The bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by any of the Credit Parties in the Cases: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral; (C) except as provided in the Interim Order or Final Order, as the case may be, to use cash collateral of Agent and the other Secured Parties or Prior Agent and Prior Lenders under Section 363(c) of the Bankruptcy Code without the prior written consent of Agent; (D) to sell any of the Collateral except to the extent expressly permitted by the terms hereof or with the prior written approval of the Agent, on behalf of the Lenders; (E) to the extent that any action or actions may be adverse to (x) Agent and Lenders or Prior Agent and Prior Lenders or their rights and remedies hereunder or their interest in the Collateral or (y) Prior Agent and Prior Lenders or their rights under the Pre-Petition Credit Agreement, the Second Lien Note Purchase Agreement or the other Pre-Petition Loan Documents or their interest in the Collateral (as defined in the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement, as applicable); or (F) that is otherwise not reasonably satisfactory to the Agent;

(b) (A) The filing of any plan of reorganization that is not an Approved Chapter 11 Plan or disclosure statement attendant thereto, or any direct or indirect amendment to such Approved Chapter 11 Plan or disclosure statement, by a Credit Party or any other Person to which Agent does not consent, (B) the entry of any order terminating or reducing the exclusivity period with respect to any Credit Party's exclusive right to file a plan of reorganization or (C) the expiration of any Credit Party's exclusive right to file a plan of reorganization;

(c) (i) The entry of an order in any of the Cases (i) confirming a plan of reorganization that (A) is not an Approved Chapter 11 Plan, (B) does not contain a provision for termination of the Commitments and repayment in full in cash of all of the Obligations under this Agreement and the Prior Lender Obligations on or before the effective date of such plan or plans, (C) that is not consistent with the Amended Restructuring Agreement or (D) does not provide for release provisions relating to the Agent and the Lenders that are satisfactory to the Agent in its sole discretion and (ii) the Restructuring Agreement is terminated by the Debtors or any other party;

(d) The entry of an order amending, supplementing, staying, vacating or otherwise modifying this Agreement, the Other Documents or the Interim Order, the Final Order or the Cash Management Order without the written consent of Agent or the filing of a motion for reconsideration with respect to the Interim Order of the

Final Order or the Interim Order, the Final Order or the Cash Management Order shall otherwise not be in full force and effect;

(e) The Final Order is not entered immediately following the expiration of the Interim Order, and in any event within thirty (30) days of the Petition Date;

(f) The payment of, or application for authority to pay, any pre-petition claim without Agent's prior written consent unless in accordance with the Approved Budget;

(g) The allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against Agent, any Lender or any of the Collateral or against the Prior Agent, any Prior Lender or any Collateral (as defined in the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement, as applicable);

(h) (A) The appointment of an interim or permanent trustee in the Cases or the appointment of a receiver or an examiner in the Cases with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Credit Parties; or (B) the sale without Agent's and Lenders' consent, of all or substantially all of the Credit Parties assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Cases, or otherwise that does not provide for payment in full in cash all of the Obligations under this Agreement and the Prior Lender Obligations at the closing of such sale or initial payment of the purchase price or effectiveness of such plan, as applicable;

(i) The dismissal of the Cases, or the conversion of the Cases from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or any Credit Party shall file a motion or other pleading seeking the dismissal of the Cases under Section 1112 of the Bankruptcy Code or otherwise or the conversion of the Cases to Chapter 7 of the Bankruptcy Code;

(j) Any Credit Party shall file a motion seeking, or the Bankruptcy Court shall enter an order granting, relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (A) to allow any creditor (other than Agent) to execute upon or enforce a Lien on any Collateral, (B) approving any settlement or other stipulation not approved by Agent with any secured creditor of any Credit Party providing for payments as adequate protection or otherwise to such secured creditor (unless otherwise approved by the Required Lenders in their sole discretion), or (C) with respect to any Lien of or the granting of any Lien on any Collateral to any federal, state or local environmental or regulatory agency or authority, which in either case involves a claim of \$250,000 or more;

(k) The commencement of a suit or action against either Agent or any Lender or Prior Agent or any Prior Lender and, as to any suit or action brought by any Person other than a Credit Party or a Subsidiary for a Credit Party, officer or employee of a Credit Party, the continuation thereof without dismissal for thirty (30) days after service thereof on either Agent or such Lender or Prior Agent or any Prior Lender, that asserts or seeks by or on behalf of a Credit Party, any state or federal environmental protection or health and safety agency, any official committee in any Case or any other party in interest in any of the Cases, a claim or any legal or equitable remedy that would (x) have the effect of subordinating any or all of the Obligations or Liens of the Agent or any Lender under this Agreement or the Other Documents or the Prior Lender Obligations or Liens of the Prior Agent or Prior Lenders under the Pre-Petition Loan Documents to any other claim, or (y) have a material adverse effect on the rights and remedies of Agent or any Lender or Prior Agent or any Prior Lender under this Agreement or any Other Document or the Prior Agent or Prior Lenders under the Pre-Petition Loan Documents or the collectability of all or any portion of the Obligations or Prior Lender Obligations;

(l) The entry of an order in the Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations owing under this Agreement or the Other Documents or the Prior Lender Obligations owing under the Pre-Petition Loan Documents;

(m) The failure of any Credit Party to perform any of its obligations under the Interim Order, the Final Order, the Cash Management Order or any other order of the Bankruptcy Court;

(n) Subject to the Carve-Out, the entry of an order in the Cases granting any other super priority administrative claim or Lien equal or superior to that granted to Agent, on behalf of itself and the Secured Parties or Prior Agent or Prior Lenders, other than as expressly set forth in the Interim Order (or the Final Order, when applicable); and/or

(o) The entry into any debtor-in-possession financing arrangement without the prior written consent of the Required Lenders, in their sole discretion;

10.8. Collateral; Invalidity of Pre-Petition Loan Documents. Any provision of any Pre-Petition Loan Document shall for any reason cease to be valid and binding on or enforceable against any Credit Party or any Subsidiary of any Credit Party party thereto or any Credit Party or any Subsidiary of any Credit Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or any Security Document (as defined in the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement, as applicable) shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in any Collateral (as defined in the Pre-Petition Credit Agreement and the Second Lien Note Purchase Agreement, as applicable), in each case, purported to be covered thereby or such security interest shall for any reason cease to be a perfected and first priority security interest subject only to Permitted Encumbrances and the provisions of the applicable Orders;

10.9. Cash Management Liabilities and Hedge Liabilities. Any default or event of default under any documents or agreements governing Cash Management Products and Services or Lender-Provided Hedges which results in monetary liability to any Credit Party (or Credit Parties) in excess of \$250,000 in the aggregate;

10.10. Lien Priority. Any Lien on Collateral ceases to be or is not a valid and perfected first priority Lien in favor of the Agent for the benefit of the Secured Parties (subject to only to Permitted Encumbrances);

10.11. Cross Default. Except for (x) defaults occasioned by the filing of the Cases, (y) defaults subject to the automatic stay of Section 362 of the Bankruptcy Code and (z) the resulting from obligations with respect to which the Bankruptcy Code prohibits any Credit Party from complying or permits any Credit Party not to comply, any payment default or any "event of default" under (i) the Specified Note or (ii) any Indebtedness (other than the Obligations) of any Credit Party with a then-outstanding principal balance (or, in the case of any Indebtedness not so denominated, with a then-outstanding total obligation amount) of \$250,000 or more (in the aggregate for all such Indebtedness as to which an event or circumstance under this Section 10.11 has occurred), or any other event or circumstance which would permit the holder of any such Indebtedness to accelerate such Indebtedness (and/or the obligations of any Credit Party thereunder) prior to the scheduled maturity or termination thereof, shall occur (regardless of whether the holder of such Indebtedness shall actually accelerate, terminate or otherwise exercise any rights or remedies with respect to such Indebtedness);

10.12. Breach of Security Agreement. (i) Termination of the Security Agreement or similar agreement executed and delivered to Agent in connection with the Obligations of any Borrower, or if any Credit Party attempts to terminate, challenges in writing the validity of, or its liability under, the Security Agreement or similar agreement, or (ii) if any breach of the terms of any such agreement occurs (other than termination in clause (i) above or termination in accordance with its terms);

10.13. Change of Control. Any Change of Control shall occur;

10.14. Invalidity. Any material provision of this Agreement or any Other Document shall, for any reason, cease to be valid and binding on any Credit Party or any Credit Party shall so claim in writing to Agent or any Lender;

10.15. Licenses. Any Governmental Body shall revoke, terminate, suspend or adversely modify any material license, permit, patent, trademark or tradename of any Credit Party or Restricted Subsidiary that is material to a Borrower's business and such revocation, termination, suspension or modification would reasonably be expected to have a Material Adverse Effect or materially and adversely affect such Credit Party's ability to conduct its business as currently conducted;

10.16. Pension Plans. An event or condition specified in Section 7.13 or Section 9.13 hereof shall occur or exist with respect to any Plan and, as a result of such event or condition, together with all other such events or conditions, any Borrower or any member of the Controlled Group shall incur liability (including liability of any Borrower in its capacity as a member of a Controlled Group) to a Plan or the PBGC (or both) which, in the reasonable judgment of Agent, would have a Material Adverse Effect or result in material liability to any Credit Party; or

10.17. Reportable Compliance Event. The occurrence of any Reportable Compliance Event, or any Credit Party's failure to immediately report a Reportable Compliance Event in accordance with Section 16.18 hereof.

10.18. SEC. The failure of the Parent Guarantor to maintain its current registration and reporting status with the Securities and Exchange Commission, including formal enforcement action by the Securities and Exchange Commission against the Parent Guarantor or any of its subsidiaries which would materially impact the Parent Guarantors ability to maintain its current registration and reporting status.

10.19. Corporate Governance. During the time from the date of the Restructuring Agreement until the Termination Date, the (i) the termination of the amended and restated charter for the special restructuring committee of the General Partner (the "Special Committee") or the dissolution of the Special Committee, (ii) the termination or replacement of the chief restructuring officer of the General Partner, without the consent of the Special Committee, (iii) the termination or replacement of the [operational consultant] engaged by the Special Committee in furtherance of its duties under its charter or (iv) the failure of the Permitted Holders or the board of directors of the General Partner to support the Approved Chapter 11 Plan.

XI. LENDERS' RIGHTS AND REMEDIES AFTER DEFAULT.

11.1. Rights and Remedies.

(a) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Bankruptcy Court, upon the occurrence of: any Event of Default and at any time thereafter (such default not having previously been cured), Agent may, and at the option of Required Lenders Agent shall, (i) declare all Obligations shall be immediately due and payable and Lenders shall have the right to terminate this Agreement and to terminate the obligation of Lenders to make Advances, (ii) immediately terminate, reduce or restrict any right or ability of the Credit Parties to use any cash collateral (other than as expressly set forth in the Interim Order or the Final Order, as applicable) and to assume control thereof, (iii) subject to five (5) days' written notice from the Required Lenders, or the Agent on their behalf, declare that the automatic stay of Section 362 of the Bankruptcy Code shall be terminated without further order of the Bankruptcy Court, without the need for filing any motion for relief from the automatic stay or any other pleading, for the limited purpose of permitting the Lenders to do any of the following: (w) foreclose on the Collateral; (x) enforce all of the guaranty rights; (y) charge the default rate of interest on the Advances; and (z) declare the principal of and accrued interest, fees and expenses constituting the obligations under the DIP Facility to be due and payable; or (iii) exercise its unqualified right to credit bid up to the full amount of the outstanding Obligations (including any accrued interest) in any sale of the Collateral (or any part thereof), which credit bid of the Obligations may, with the consent of the applicable Prior Agents, incorporate a credit bid of the Prior Lender Obligations (including any accrued interest), and whether such sale is effectuated through section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise and/or (iv) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders

under this Agreement, the Other Documents or applicable law. Agent may enter any of any Credit Party's premises or other premises without legal process and without incurring liability to any Credit Party therefor, and Agent may thereupon, or at any time thereafter, in its discretion without notice or demand, take the Collateral and remove the same to such place as Agent may deem advisable and Agent may require Credit Parties to make the Collateral available to Agent at a convenient place. In connection with the exercise of the foregoing remedies, Agent is granted a perpetual nonrevocable, royalty free, nonexclusive license and Agent is granted permission to use all of each Credit Party's (a) trademarks, trade styles, trade names, trade name applications, domain names, domain name applications, patents, patent applications, copyrights, service marks, licenses, franchises and other proprietary rights which are used or useful in connection with Inventory for the purpose of marketing, advertising for sale and selling or otherwise disposing of such Inventory and (b) Equipment for the purpose of completing the manufacture of unfinished goods and, in each case, the Credit Parties shall assist Agent in obtaining access and the rights to use, at no cost or expense, the property described in the foregoing clauses (a) and (b). The cash proceeds realized from the sale of any Collateral shall be applied to the Obligations in the order set forth in Section 11.5 hereof unless required otherwise by Applicable Law. Noncash proceeds will only be applied to the Obligations as they are converted into cash. If any deficiency shall arise, Credit Parties shall remain liable to Agent and Lenders therefor.

(b) Pursuant to the applicable Order, the automatic stay of Section 362 of the Bankruptcy Code shall be modified and vacated to permit Agent and Lenders to exercise all rights and remedies under this Agreement, the Other Documents or applicable law, without further notice, application or motion to, hearing before, or order from, the Bankruptcy Court.

(c) To the extent that Applicable Law imposes duties on Agent to exercise remedies in a commercially reasonable manner, each Credit Party acknowledges and agrees that it is not commercially unreasonable for Agent: (i) to fail to incur expenses reasonably deemed significant by Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition; (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Customers or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Customers and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (vi) to contact other Persons, whether or not in the same business as any Credit Party, for expressions of interest in acquiring all or any portion of such Collateral; (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets; (ix) to dispose of assets in wholesale rather than retail markets; (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment; (xi) to purchase insurance or credit enhancements to insure Agent against risks of loss, collection or disposition of Collateral or to provide to Agent a guaranteed return from the collection or disposition of Collateral; or (xii) to the extent deemed appropriate by Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Agent in the collection or disposition of any of the Collateral. Each Credit Party acknowledges that the purpose of this Section 11.1(c) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in Agent's exercise of remedies against the Collateral and that other actions or omissions by Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 11.1(c). Without limitation upon the foregoing, nothing contained in this Section 11.1(c) shall be construed to grant any rights to any Credit Party or to impose any duties on Agent that would not have been granted or imposed by this Agreement or by Applicable Law in the absence of this Section 11.1(c).

11.2. Agent's Discretion. Agent shall have the right in its sole discretion to determine which rights, Liens, security interests or remedies Agent may at any time pursue, relinquish, subordinate, or modify or to take

any other action with respect thereto and such determination will not in any way modify or affect any of Agent's or Lenders' rights hereunder.

11.3. Setoff. Subject to Section 14.12, in addition to any other rights which Agent or any Lender may have under Applicable Law, upon the occurrence of an Event of Default hereunder, Agent and such Lender shall have a right, immediately and without notice of any kind, to apply any Credit Party's property held by Agent and such Lender to reduce the Obligations (notwithstanding the provisions of 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court).

11.4. Rights and Remedies not Exclusive. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any rights or remedy shall not preclude the exercise of any other right or remedies provided for herein or otherwise provided by law, all of which shall be cumulative and not alternative.

11.5. Allocation of Payments After Event of Default. Notwithstanding any other provisions of this Agreement to the contrary, upon the occurrence and during the continuance of an Event of Default, all amounts collected or received by Agent on account of the Obligations or any other amounts outstanding under any of the Other Documents or in respect of the Collateral shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of the Agent (to the extent invoiced) in connection with enforcing its rights and the rights of the Lenders under this Agreement and the Other Documents, under or pursuant to the terms of this Agreement;

SECOND, to payment of any fees (to the extent invoiced) owed to Agent;

THIRD, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of each of the Lenders to the extent owing to such Lender pursuant to the terms of this Agreement;

FOURTH, to the payment of all Obligations arising under this Agreement and the Other Documents consisting of accrued fees and interest with respect to Advances and Commitment Percentages;

FIFTH, to the payment of Advances not repaid pursuant to clauses "FIRST" through "FOURTH" above;

SIXTH, to all other Obligations which shall have become due and payable and not repaid pursuant to clauses "FIRST" through "FIFTH"; and

SEVENTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; and (ii) each of the Lenders shall receive (so long as it is not a Defaulting Lender) an amount equal to its Pro Rata Share (based on the proportion that the then outstanding Advances held by such Lender bears to the aggregate then outstanding Advances) of amounts available to be applied pursuant to clauses "THIRD", "FIFTH" and "SIXTH". Monies and proceeds obtained from a Credit Party shall not be applied to its Excluded Hedge Liabilities, but appropriate adjustments shall be made with respect to amounts obtained from other Credit Parties to preserve the allocations specified above.

XII. WAIVERS AND JUDICIAL PROCEEDINGS.

12.1. Waiver of Notice. To the fullest extent permitted by Applicable Law, each Borrower hereby waives notice of non-payment of any of the Receivables, demand, presentment, protest and notice thereof with respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, Collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein.

12.2. Delay. No delay or omission on Agent's or any Lender's part in exercising any right, remedy or option shall operate as a waiver of such or any other right, remedy or option or of any Default or Event of Default.

12.3. Jury Waiver. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

XIII. EFFECTIVE DATE AND TERMINATION.

13.1. Term. This Agreement, which shall inure to the benefit of and shall be binding upon the respective successors and permitted assigns of each Credit Party signatory hereto, Agent and each Lender, shall become effective on the Closing Date and shall continue in full force and effect until the Maturity Date unless sooner terminated as herein provided. Borrowers may terminate this Agreement at any time upon five (5) days' irrevocable prior written notice upon payment in full of the Obligations (other than contingent indemnity claims not yet asserted or threatened) and termination of the Commitments.

13.2. Termination. The termination of the Agreement shall not affect any Credit Party's, Agent's or any Lender's rights, or any of the Obligations having their inception prior to the effective date of such termination, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights or interests created or Obligations (other than contingent indemnity claims not yet asserted or threatened) have been fully and indefeasibly paid, disposed of, concluded or liquidated and all Commitments have been terminated. The security interests, Liens and rights granted to Agent for the benefit of the Secured Parties hereunder and the financing statements filed in connection therewith shall continue in full force and effect, notwithstanding the termination of this Agreement or the fact that Borrowers' Account may from time to time be temporarily in a zero or credit position, until the Termination Date. Upon the occurrence of the Termination Date or any release of Collateral or any part thereof in accordance with the provisions of this Agreement, then the Collateral (or such part of the Collateral) shall be released from the security interests created by this Agreement and Agent shall, upon the request and at the sole cost and expense of the Borrowers and receipt by Agent of a certificate from an Authorized Officer of the Borrowing Agent confirming that such release (other than in connection with the occurrence of the Termination Date) is permitted under this Agreement and each Other Document, assign, transfer and deliver to Credit Parties, without recourse to or warranty by Agent, such of the Collateral or any part thereof as may be in possession of and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Collateral, proper documents and instruments

(including UCC-3 termination financing statements or releases) acknowledging the termination of the Liens granted pursuant to this Agreement. All representations, warranties, covenants, waivers and agreements contained herein shall survive termination hereof until all Obligations (other than contingent indemnity claims not yet asserted or threatened) are indefeasibly paid and performed in full and all Commitments have been terminated.

XIV. REGARDING AGENT.

14.1. Appointment. Each Lender hereby designates HPS to act as Agent for such Lender under this Agreement and the Other Documents. Each Lender hereby irrevocably authorizes Agent to (i) enter into the Other Documents and to take such action on its behalf under the provisions of this Agreement and the Other Documents and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto and Agent shall hold all Collateral, payments of principal and interest, fees, charges and collections (without giving effect to any collection days) received pursuant to this Agreement, for the benefit of Lenders entitled thereto and (ii) without limiting the foregoing, consent, on behalf of each Lender, to the Interim Order and the Final Order, each to be negotiated between the Credit Parties, Agent, and the statutory committees appointed pursuant to Section 327 and 1103 of the Bankruptcy Code. Agent may perform any of its duties hereunder by or through its agents or employees. As to any matters not expressly provided for by this Agreement (including collection of the Note) Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, and such instructions shall be binding; provided however that Agent shall not be required to take any action which exposes Agent to liability or which is contrary to this Agreement or the Other Documents or Applicable Law unless Agent is furnished with an indemnification reasonably satisfactory to Agent with respect thereto.

14.2. Nature of Duties. Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and the Other Documents. Neither Agent nor any of its officers, directors, employees or agents shall be (i) liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), or (ii) responsible in any manner for any recitals, statements, representations or warranties made by any Borrower or any officer thereof contained in this Agreement, or in any of the Other Documents or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any of the Other Documents or for the value, validity, effectiveness, genuineness, due execution, enforceability or sufficiency of this Agreement, or any of the Other Documents or for any failure of any Borrower to perform its obligations hereunder or for the existence, priority or perfection of the Liens and security interests granted hereunder or under any Other Documents or in the value of any of the Collateral. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any of the Other Documents, or to inspect the properties, books or records of any Borrower. The duties of Agent as respects the Advances to Borrowers shall be mechanical and administrative in nature; Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon Agent any obligations in respect of this Agreement except as expressly set forth herein. Anything herein to the contrary notwithstanding, none of the Lenders listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any Other Document, except in its capacity, as applicable, as Agent, Collateral Agent, Agent or a Lender hereunder or thereunder. No Secured Party has any fiduciary relationship with or duty to any Credit Party arising out of or in connection with this Agreement or any Other Document, and the relationship between the Credit Parties, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor. No joint venture is created hereby or by any Other Document or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Credit Parties and the Secured Parties.

Without limiting the foregoing, the Agent shall not be required to act hereunder or to advance its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of its rights hereunder and under any Other Document, and shall in all cases be fully justified in failing or refusing to act hereunder unless it shall receive further assurances to its satisfaction from the Lenders of their indemnification obligations under and in accordance with the provisions of Section 14.7 against any and all liability and expense that may be incurred by it by reason of taking or continuing to take or refraining from taking any such action. The Agent shall be fully justified in requesting direction from the Required Lenders in the event this Agreement or any Other Document is silent or vague with respect to Agent's duties, rights or obligations. The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final and non-appealable decision. In no instance shall the Agent have any liability for special, consequential or indirect damages or penalties (including lost profits) even if it has been advised of the likelihood of the same. Without prejudice to the generality of the foregoing, the Agent shall not be liable for any damage or loss resulting from or caused by events or circumstances beyond the Agent's reasonable control, including nationalization, expropriation, currency restrictions, the interruption, disruption or suspension of the normal procedures and practices of any securities market, power, mechanical, communications or other technological failures or interruptions, computer viruses or the like, acts of war or terrorism, riots, revolution, acts of God, work stoppages, strikes, national disasters of any kind, or other similar events or acts.

14.3. Lack of Reliance on Agent and Resignation. Independently and without reliance upon Agent or any other Lender, each Lender has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of each Credit Party in connection with the making and the continuance of the Advances hereunder and the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of each Credit Party. Agent shall have no 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 its possession before making of the Advances or at any time or times thereafter except as shall be provided by any Credit Party pursuant to the terms hereof. Agent shall not be responsible to any Lender for any recitals, statements, information, representations or warranties herein or in any agreement, document, certificate or a statement delivered in connection with or for the execution, effectiveness, genuineness, validity, enforceability, collectability, sufficiency or value of this Agreement or any Other Document or any other instrument or document furnished pursuant hereto or thereto, or of the financial condition of any Credit Party, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement, the Note, the Other Documents or the financial condition of any Borrower, or the existence of any Event of Default or any Default.

Agent may resign on sixty (60) days' written notice to each of Lenders and Borrowing Agent and upon such resignation, the Required Lenders will promptly designate a successor Agent reasonably satisfactory to Borrowing Agent. If a successor Agent shall not have been so appointed within said sixty (60) Business Day period, the retiring Agent may appoint a successor Agent reasonably satisfactory to Borrower who shall serve as an Agent until such time, if any, as the Required Lenders appoint a successor Agent as provided above.

Any such successor Agent shall succeed to the rights, powers and duties of Agent, and the term "Agent" shall mean such successor agent effective upon its appointment, and the former Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Agent. After any Agent's resignation as Agent, the provisions of this Article XIV shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

If the Person serving as Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrowing Agent and such Person remove such Person as Agent and, in consultation with the Borrowing Agent, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal

Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

14.4. Certain Rights of Agent. The Agent 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 Documents the Agent is permitted or required to take or to grant. If Agent shall request any such instructions, Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from the Required Lenders; and Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, Lenders shall not have any right of action whatsoever against Agent as a result of its acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders.

14.5. Reliance. Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing (including any electronic message), resolution, notice, statement, certificate, telex, teletype or telecopier message, cablegram, order or other document or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person or entity, and, with respect to all legal matters pertaining to this Agreement and the Other Documents and its duties hereunder, upon advice of counsel selected by it. Agent may employ agents and attorneys-in-fact and shall not be liable for the acts, omissions, negligence or misconduct of any such agents or attorneys-in-fact selected by Agent with reasonable care. In determining compliance with any condition hereunder, the Agent shall be entitled to receive, and shall not incur any liability for relying upon, a certificate of an Authorized Officer or an opinion of counsel or both certifying as to compliance with such condition. The Agent may consult with legal counsel (who may be counsel for the Credit Parties or any Lender), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

14.6. Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder or under the Other Documents, unless Agent has received written notice from a Lender or Borrowing Agent referring to this Agreement or the Other Documents, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that Agent receives such a notice, Agent shall give notice thereof to Lenders and Borrowers. Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; provided that, unless and until Agent shall have received such directions, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of Lenders.

14.7. Indemnification. To the extent Agent is not reimbursed and indemnified by Borrowers, each Lender will reimburse and indemnify Agent in proportion to its respective portion of the Advances (or, if no Advances are outstanding, according to its Commitment Percentage), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature, including, without limitation, the fees and expenses of its agents and attorneys, whatsoever which may be imposed on, incurred by or asserted against Agent in performing its duties hereunder, or in any way relating to or arising out of this Agreement or any Other Document; provided that, Lenders shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Agent’s gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment).

14.8. Agent in its Individual Capacity. With respect to the obligation of Agent to lend under this Agreement, the Advances made by it shall have the same rights and powers hereunder as any other Lender and as if it were not performing the duties as Agent specified herein; and the term “Lender” or any similar term shall, unless the context clearly otherwise indicates, include Agent in its individual capacity as a Lender. Agent may engage in business with any Borrower as if it were not performing the duties specified herein, and may accept fees and other consideration from any Borrower for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

14.9. Delivery of Documents. To the extent Agent receives financial statements required under Sections 9.3, 9.8, 9.10 and 9.11, Agent will promptly furnish such documents and information to Lenders.

14.10. Borrowers' Undertaking to Agent. Without prejudice to their respective obligations to Lenders under the other provisions of this Agreement, each Borrower hereby undertakes with Agent to pay to Agent from time to time on demand all amounts from time to time due and payable by it for the account of Agent or Lenders or any of them pursuant to this Agreement to the extent not already paid. Any payment made pursuant to any such demand shall pro tanto satisfy the relevant Borrower's obligations to make payments for the account of Lenders or the relevant one or more of them pursuant to this Agreement.

14.11. No Reliance on 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 Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any Borrower, its Affiliates or its agents, this Agreement, the Other Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any record-keeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or such other Laws.

14.12. Other Documents. Each of the Lenders agrees that it shall not, without the express consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the request of Agent, set off against the Obligations, any amounts owing by such Lender to any Borrower or any deposit accounts of any Borrower now or hereafter maintained with such Lender. Anything in this Agreement to the contrary notwithstanding, each of the Lenders further agrees that it shall not, unless specifically requested to do so by Agent, take any action to protect or enforce its rights arising out of this Agreement or the Other Documents, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the Other Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

14.13. Withholding Tax. To the extent required by any Applicable Law Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any other Governmental Body asserts a claim that Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify Agent of a change in circumstance that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify and hold harmless Agent fully for all amounts paid, directly or indirectly, by Agent as Tax or otherwise, including any penalties, additions to Tax or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred (to the extent invoiced), whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any Other Document against any amount due Agent under this Section 14.13. The agreements in this Section 14.13 shall survive the resignation and/or replacement of Agent, any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the repayment, satisfaction or discharge of all other obligations.

14.14. Collateral and Guaranty Matters. Each of the Lenders (including in their capacity as counterparties to any Hedge Liabilities or Cash Management Liabilities) irrevocably authorize the Agent, at its option and in its discretion, (a) to release any Lien on any property granted to or held by the Agent under this Agreement and/or any applicable Other Document (i) upon the occurrence of the Termination Date, (ii) that is sold or to be sold as part of or in connection with any sale permitted under this Agreement to a Person that is not a Credit Party, (iii) that constitutes Excluded Collateral, or (iv) if approved, authorized or ratified in writing in

accordance with Section 16.2 and (b) to release any Guarantor from its obligations under this Agreement and the Other Documents if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted under this Agreement. Upon request by the Agent at any time, the Required Lenders will confirm in writing the Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under this Agreement and the Other Documents pursuant to this Section 14.14.

XV. BORROWING AGENCY.

15.1. Borrowing Agency Provisions.

(a) Each Borrower hereby irrevocably designates Borrowing Agent to be its attorney and agent and in such capacity to borrow, sign and endorse notes, and execute and deliver all instruments, documents, writings and further assurances now or hereafter required hereunder, on behalf of such Borrower or Borrowers, and hereby authorizes Agent to pay over or credit all loan proceeds hereunder in accordance with the request of Borrowing Agent.

(b) The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to Borrowers and at their request. Neither Agent nor any Lender shall incur liability to Borrowers as a result thereof.

(c) Each of the Borrowers shall be jointly and severally liable with respect to their Obligations under the Agreement and the Other Documents to which it is party (including the Obligations to repay the Advances and interest and fees thereon, together with each other payment, reimbursement, indemnification and contribution Obligation under this Agreement and any Other Document). Such joint and several liability of each Borrower shall not be impaired or released by, and each Borrower irrevocably waives any defense it might have by virtue of: (i) the failure of any Lender or the Agent or any successor or assign thereof to assert any claim or demand or to exercise or enforce any right, power or remedy against any Borrower, any other Person, any collateral under this Agreement or otherwise, (ii) any extension or renewal for any period (whether or not longer than the original period) or exchange of any of the obligations under this Agreement or any Other Document or the release or compromise of any obligation of any nature of any Person with respect thereto, (iii) the surrender, release or exchange of all or any part of any property (including any collateral under this Agreement or otherwise) securing payment, performance and/or observance of any of the obligations under this Agreement or the Other Documents or the compromise or extension or renewal for any period (whether or not longer than the original period) of any obligations of any nature of any Person with respect to any such property, (iv) any action or inaction on the part of any Lender, the Agent or any other Person, or any other event or condition with respect to any other Borrower, including any such action or inaction or other event or condition, which might otherwise constitute a defense available to, or a discharge of, such other Borrower, or a guarantor or surety of or for any or all of the Obligations under this Agreement or the Other Documents, (v) any disability, incapacity or lack of powers, authority or legal personality of or dissolution or change in the members or status of any Borrower or any other person, (vi) any unenforceability, illegality or invalidity of any obligation of any other Person under this Agreement or any Other Document or any other document, guaranty or security, (vii) any avoidance, postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of any Credit Party under this Agreement or an Other Document resulting from any bankruptcy, insolvency, receivership, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall for the purposes of such other Borrower's obligations hereunder be construed as if there were no such circumstances, (viii) the release or substitution of any other Borrower in respect of the Obligations, or (ix) any other act, matter or thing which would or might, in the absence of this provision, operate to release, discharge or otherwise prejudicially affect the joint and several nature of the obligations of such or any other Borrower. It is understood and agreed that the Lenders and the Agent shall be entitled to payment from any one or more Borrowers, as determined by the Lenders and the Agent in their discretion, of any amount due in accordance with this Agreement and the Other Documents, and no Lender nor the Agent shall be required to seek prior or simultaneous payment from any other Borrower. Until the indefeasible payment in full in cash of all Obligations and the expiration or termination of the Commitments under this Agreement, each Borrower

hereby agrees that it shall not exercise any right or remedy arising by reason of any performance by such Borrower of its obligations hereunder, whether by subrogation, reimbursement, contribution, indemnification or otherwise, against any other Borrower or any other Person or any Collateral for any of the Obligations.

(d) Notwithstanding anything to the contrary in Section 15.1(c), the obligations of each Borrower under Section 15.1(c) with respect to advances made by a Secured Party to one or more other Borrowers shall be limited to a maximum aggregate amount equal to the largest amount that would not render such Borrower's undertakings hereunder subject to avoidance as a fraudulent transfer or fraudulent conveyance under Section 548 of Title 11 of the United States Bankruptcy Code or any applicable provisions of comparable state law (collectively, the "Fraudulent Transfer Laws"), in each case taking into account the provisions of Section 15.1(e), and after giving effect to all other liabilities of such Borrower, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, contribution, reimbursement, indemnity or similar rights of such Borrower pursuant to applicable law or any agreement providing for an equitable allocation among such Borrower and the other Borrowers and Affiliates of the Borrowers of obligations arising under co-borrowings or guarantees by such parties.

(e) The Borrowers hereby agree, as between themselves, that if any Borrower shall become an Excess Funding Borrower (as defined below) by reason of the payment by such Borrower of any of the Obligations, each other Borrower shall, on written demand of such Excess Funding Borrower (but subject to the immediately following sentence), pay to such Excess Funding Borrower an amount equal to such Borrower's Pro Rata Borrower Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Borrower) of the Excess Borrower Payment (as defined below) in respect of such Obligations. The payment obligation of a Borrower to any Excess Funding Borrower under this clause (e) shall be subordinated and subject in right of payment to the prior payment in full of the Obligations and such Excess Funding Borrower shall not exercise any right or remedy with respect to such excess until payment in full of all of the Obligations. For purposes of this Section 15.1(e), (i) "Excess Funding Borrower" means a Borrower that has paid an amount in excess of its Pro Rata Borrower Share of the Obligations, (ii) "Excess Borrower Payment" means the amount paid by an Excess Funding Borrower in excess of its Pro Rata Borrower Share of the Obligations and (iii) "Pro Rata Borrower Share" means, for any Borrower, the ratio (expressed as a percentage) of (x) the amount by which the aggregate fair saleable value of all properties of such Borrower (excluding any shares of stock of any other Borrower) exceeds the amount of all the debts and liabilities of such Borrower (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Borrower hereunder and any obligations of any other Borrower that have been guaranteed by such Borrower) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Borrowers exceeds the amount of all the debts and liabilities of all of the Borrowers (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of the Borrowers under this Agreement and the Other Documents), determined (A) with respect to any Borrower that is a party hereto on the date hereof, as of the date hereof, and (B) with respect to any other Borrower, as of the date such Borrower becomes a Borrower hereunder.

15.2. Waiver of Subrogation. Each Borrower expressly waives any and all rights of subrogation, reimbursement, exoneration, contribution of any other claim which such Borrower may now or hereafter have against the other Borrowers or other Person directly or contingently liable for the Obligations hereunder, or against or with respect to the other Borrowers' property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until the Termination Date.

XVI. MISCELLANEOUS.

16.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applied to contracts to be performed wholly within the State of New York and any applicable laws of the United States of America, including the Bankruptcy Code. Each Credit Party hereby

consents and agrees that the Bankruptcy Court shall have exclusive jurisdiction to hear and determine any claims or disputes between the Credit Parties, Agent and Lenders pertaining to this Agreement or any of the Other Documents or to any matter arising out of or relating to this Agreement or any of the Other Documents; provided, that the Agent, Lenders and the Credit Parties acknowledge that any appeals from the Bankruptcy Court may have to be heard by a court other than the Bankruptcy Court; provided further, that nothing in this Agreement shall be deemed or operate to preclude agent from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Agent. Each Credit Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Credit Party hereby waives any objection that such Credit Party may have based upon lack of personal jurisdiction, improper venue or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Each Credit Party hereby waives personal service of any and all process upon it and consents that all such service of process may be made by registered mail (return receipt requested) directed to Borrowing Agent at its address set forth in Section 16.6 and service so made shall be deemed completed five (5) days after the same shall have been so deposited in the mails of the United States of America, or, at Agent's option, by service upon Borrowing Agent which each Credit Party irrevocably appoints as such Credit Party's Agent for the purpose of accepting service within the State of New York. Nothing herein shall affect the right to serve process in any manner permitted by law or shall limit the right of Agent or any Lender to bring proceedings against any Credit Party in the courts of any other jurisdiction. Each Credit Party waives any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens with respect to any action brought in the aforesaid courts. The provisions of Sections 3.6, 16.20 and 16.21 are included solely out of an abundance of caution and shall not be construed to mean that any provisions of Texas law are in any way applicable to this Agreement, the Other Documents or any of the Obligations.

16.2. Entire Understanding; Amendments; No Waiver by Course of Conduct.

(a) This Agreement and the documents executed concurrently herewith contain the entire understanding among each Credit Party, Agent and each Lender and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing, signed by each Credit Party's, Agent's and each Lender's respective officers. Neither this Agreement nor any portion or provisions hereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged (with a copy of each amendment provided to the Agent). Each Credit Party acknowledges that it has been advised by counsel in connection with the execution of this Agreement and Other Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement. If any provision in this Agreement or any Other Document conflicts with any provision in the Interim Order or Final Order, the provision in the Interim Order or Final Order shall govern and control.

(b) The Required Lenders, Agent with the consent in writing of the Required Lenders, and the applicable Credit Parties may, subject to the provisions of this Section 16.2(b), from time to time enter into written supplemental agreements to this Agreement or the Other Documents (other than with respect to Cash Management Products and Services and Lender-Provided Hedges, other similar agreements or the Fee Letter, which shall require only the consent of the parties thereto) executed by the applicable Credit Parties, for the purpose of adding or deleting any provisions or otherwise changing, varying or waiving in any manner the rights of Lenders, Agent or Credit Parties thereunder or the conditions, provisions or terms thereof or waiving any Event of Default thereunder, but only to the extent specified in such written agreements; provided however that no such supplemental agreement shall:

(i) increase the Commitment Percentage, or the maximum dollar amount of the Commitment Amount of any Lender without the consent of such Lender directly affected thereby;

(ii) whether or not any Advances are outstanding, extend the Maturity Date or the time for payment of principal or interest of any Advance (excluding the due date of any mandatory prepayment of an Advance), or any fee payable to any Lender, or reduce the principal amount of or the rate of interest borne by any Advances or reduce any fee payable to any Lender, without the consent of each Lender directly affected thereby (except that Required Lenders may elect to waive or rescind any imposition of the Default Rate under Section 3.1 (unless imposed by Agent));

(iii) except in connection with any increase pursuant to Section 2.15 hereof, increase the Maximum Advance Amount without the consent of all Lenders;

(iv) alter the definition of the term Required Lenders or alter, amend or modify this Section 16.2(b) without the consent of all Lenders;

(v) alter, amend or modify the provisions of Sections 2.10(e), 2.17 or 11.5, or any other provision hereof providing for the pro rata sharing by the Lenders of payments received on the Advances or the pro rata reduction of their commitments to make Advances without the consent of all Lenders;

(vi) other than in accordance with the provisions of this Agreement upon the occurrence of the Termination Date or with respect to any disposition of Collateral permitted under this Agreement, release all or substantially all of the Collateral without the consent of all Lenders;

(vii) change the exculpatory provisions in this Agreement benefitting Agent without the consent of all Lenders; or

(viii) release any Guarantor or Borrower (except as otherwise permitted under this Agreement) without the consent of all Lenders.

(c) Any such supplemental agreement shall apply equally to each Lender and shall be binding upon Borrowers, Lenders and Agent and all future holders of the Obligations. In the case of any waiver, Borrowers, Agent and Lenders shall be restored to their former positions and rights, and any Event of Default waived shall be deemed to be cured and not continuing, but no waiver of a specific Event of Default shall extend to any subsequent Event of Default (whether or not the subsequent Event of Default is the same as the Event of Default which was waived), or impair any right consequent thereon.

(d) Nothing herein contained, and no act done or omitted by the Agent pursuant to the powers and rights granted it herein, shall be deemed to be a waiver by the Agent of its rights and remedies under this Agreement, any Organizational Document of any Credit Party or any related document, but this Agreement is made and accepted without prejudice to any of the rights and remedies possessed by the Agent under the terms hereof or thereof. The right of the Agent to collect any amounts due to the Secured Parties hereunder or any Other Document and to enforce its rights with respect to Collateral may be exercised by the Agent either prior to, simultaneously with or subsequent to any action taken by it hereunder or any Other Document.

16.3. Successors and Assigns; Participations.

(a) This Agreement shall be binding upon and inure to the benefit of each Credit Party, Agent, each Lender, all future holders of the Obligations and their respective successors and permitted assigns, except that Credit Parties may not assign or transfer any of their rights or obligations under this Agreement without the prior written consent of Agent and each Lender.

(b) Each Borrower acknowledges that in the regular course of commercial banking business one or more Lenders may at any time and from time to time sell participating interests in the Advances to other financial institutions (each such transferee or purchaser of a participating interest, a "Participant"). Each Participant may exercise all rights of payment (including rights of set-off to the extent permitted by Applicable

Law) with respect to the portion of such Advances held by it or other Obligations payable hereunder as fully as if such Participant were the direct holder thereof, and each Participant shall have the benefits of Section 3.10 hereof (subject to the rights and limitations therein, provided that any forms required to be provided by any Participant pursuant to Section 3.10 shall be provided to the participating Lender) provided that Borrowers shall not be required to pay to any Participant more than the amount which it would have been required to pay to Lender which granted an interest in its Advances or other Obligations payable hereunder to such Participant had such Lender retained such interest in the Advances hereunder or other Obligations payable hereunder, unless the sale of the participation is made with the Borrowers' prior written consent (not to be unreasonably withheld or delayed) and in no event shall Borrowers be required to pay any such amount arising from the same circumstances and with respect to the same Advances or other Obligations payable hereunder to both such Lender and such Participant. Each Participant shall have the benefits of Section 3.10 hereof. Each Borrower hereby grants to any Participant a continuing security interest in any deposits, moneys or other property actually or constructively held by such Participant as security for the Participant's interest in the Advances. No Lenders shall transfer, grant or sell any participation under which the participant shall have the right to approve any amendment or waiver of this Agreement except to the extent such amendment or waiver would require the approval of all Lenders pursuant to Section 16.2(b). Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Advances or other obligations under this Agreement and the Other Documents (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 this Agreement or any Other 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 Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register

(c) Any Lender may assign all or any part of its rights and obligations under or relating to Advances under this Agreement and the Other Documents to one or more additional banks or financial institutions (each such assignee, a "Purchasing Lender"), in minimum amounts of not less than \$1,000,000, pursuant to a Commitment Transfer Supplement, executed by a Purchasing Lender, the transferor Lender, and Agent and delivered to Agent for recording; provided that any such assignment will require the consent of Agent. Upon such execution, delivery, acceptance and recording, from and after the transfer effective date determined pursuant to such Commitment Transfer Supplement, (i) Purchasing Lender thereunder shall be a party hereto and, to the extent provided in such Commitment Transfer Supplement, have the rights and obligations of a Lender thereunder with a Commitment Percentage as set forth therein, and (ii) the transferor Lender thereunder shall, to the extent provided in such Commitment Transfer Supplement, be released from its obligations under this Agreement, the Commitment Transfer Supplement creating a novation for that purpose. Such Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing Lender and the resulting adjustment of the Commitment Percentages arising from the purchase by such Purchasing Lender of all or a portion of the rights and obligations of such transferor Lender under this Agreement and the Other Documents. Each Borrower hereby consents to the addition of such Purchasing Lender and the resulting adjustment of the Commitment Percentages arising from the purchase by such Purchasing Lender of all or a portion of the rights and obligations of such transferor Lender under this Agreement and the Other Documents. Borrowers shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing.

(d) Any Lender, with the consent of Agent which shall not be unreasonably withheld or delayed, may directly or indirectly sell, assign or transfer all or any portion of its rights and obligations under or relating to Advances under this Agreement and the Other Documents to an entity, whether a corporation, partnership, trust, limited liability company or other entity that (i) is engaged in making, purchasing, holding or otherwise

investing in bank loans and similar extensions of credit in the ordinary course of its business and (ii) is administered, serviced or managed by the assigning Lender or an Affiliate of such Lender (a “Purchasing CLO” and together with each Participant and Purchasing Lender, each a “Transferee” and collectively the “Transferees”), pursuant to a Commitment Transfer Supplement modified as appropriate to reflect the interest being assigned (“Modified Commitment Transfer Supplement”), executed by any intermediate purchaser, the Purchasing CLO, the transferor Lender, and Agent as appropriate and delivered to Agent for recording. Upon such execution and delivery, from and after the transfer effective date determined pursuant to such Modified Commitment Transfer Supplement, (i) Purchasing CLO thereunder shall be a party hereto and, to the extent provided in such Modified Commitment Transfer Supplement, have the rights and obligations of a Lender thereunder and (ii) the transferor Lender thereunder shall, to the extent provided in such Modified Commitment Transfer Supplement, be released from its obligations under this Agreement, the Modified Commitment Transfer Supplement creating a novation for that purpose. Such Modified Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing CLO. Each Borrower hereby consents to the addition of such Purchasing CLO. Borrowers shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing.

(e) Agent shall maintain at one of its offices a copy of each Commitment Transfer Supplement and Modified Commitment Transfer Supplement delivered to it and a register (the “Register”) for the recordation of the names and addresses of each Lender and the outstanding principal, accrued and unpaid interest and other fees due hereunder. The entries in the Register shall be conclusive, in the absence of manifest error, and each Borrower, Agent and Lenders shall treat each Person whose name is recorded in the Register as the owner of the Advance recorded therein for the purposes of this Agreement. The Register shall be available for inspection by any Borrower or any Lender (with respect to its own interests) at any reasonable time and from time to time upon reasonable prior written notice. Agent shall receive (i) 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 USA PATRIOT Act and (ii) a fee in the amount of \$3,500 payable by the applicable Purchasing Lender and/or Purchasing CLO upon the effective date of each transfer or assignment (other than to an intermediate purchaser) to such Purchasing Lender and/or Purchasing CLO.

(f) Each Borrower authorizes each Lender to disclose to any Transferee and any prospective Transferee any and all financial information in such Lender’s possession concerning such Borrower which has been delivered to such Lender by or on behalf of such Borrower pursuant to this Agreement or in connection with such Lender’s credit evaluation of such Borrower; provided that the Transferee or prospective Transferee agrees to be bound by a non-disclosure agreement approved by Borrowers pursuant to which Borrowers are third party beneficiaries.

(g) Notwithstanding anything to the contrary in this Section 16.3: (i) no sale, transfer or assignment of all or any portion of any Lender’s rights and obligations under or relating to Loans under this Agreement shall be made to any Credit Party or any of their respective Affiliates.

(h) Notwithstanding anything to the contrary contained in this Agreement, any Lender may at any time and from time to 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; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

16.4. [Reserved].

16.5. Indemnity. Each Credit Party shall defend, protect, indemnify, pay and save harmless Agent each Lender and each of their respective officers, directors, Affiliates, attorneys, employees and agents (each a “Indemnified Party”) for and from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, actions, judgments, suits, costs, charges, expenses and disbursements of any kind or

nature whatsoever (including reasonable fees and disbursements of counsel (including allocated costs of internal counsel)) (collectively, “Claims”) which may be imposed on, incurred by, or asserted against any Indemnified Party in arising out of or in any way relating to or as a consequence, direct or indirect, of: (a) this Agreement, the Other Documents, the Advances and other Obligations and/or the transactions contemplated hereby including the Transactions, (b) any action or failure to act or action taken only after delay or the satisfaction of any conditions by any Indemnified Party in connection with and/or relating to the negotiation, execution, delivery or administration of the Agreement and the Other Documents, the credit facilities established hereunder and thereunder and/or the transactions contemplated hereby including the Transactions, (c) any Credit Party’s failure to observe, perform or discharge any of its covenants, obligations, agreements or duties under or breach of any of the representations or warranties made in this Agreement and the Other Documents, (d) the enforcement of any of the rights and remedies of Agent or any Lender under the Agreement and the Other Documents, (e) any threatened or actual imposition of fines or penalties, or disgorgement of benefits, for violation of any Anti-Terrorism Law by any Credit Party, any Affiliate or Subsidiary of any Credit Party, (f) any claim, litigation, proceeding or investigation instituted or conducted by any Governmental Body or instrumentality or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Other Documents, whether or not brought by any Credit Party, any director, equity holder or creditor thereof, any Indemnified Party or any other Person and whether or not any Indemnified Party is a party thereto and (g) arising from or incurred by reason of the handling of the financing arrangements of Borrowers as provided in Section 15.1, reliance by Agent or any Lender on any request or instruction from Borrowing Agent or any other action taken by Agent or any Lender with respect to Section 15.1; *provided, however*, notwithstanding anything in this Section 16.5, to the contrary, no Credit Party shall be required to indemnify any Indemnified Party for any Claim which, in each case is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from (x) such Indemnified Party’s own gross negligence or willful misconduct or that of its respective Affiliates or each of their respective officers, directors, employees, advisors and agents, or (y) any dispute solely among Indemnified Parties and not involving a Credit Party or any Subsidiary or Affiliate thereof and not arising out of or in connection with, in each case is found in a final non-appealable judgment by a court of competent jurisdiction, (i) the Agent’s or its Affiliates’ respective capacities in connection with this Agreement or in fulfilling their roles as Agent, arranger or bookrunner or (ii) any action or inaction of a Credit Party, any of its Subsidiaries or Affiliates. Without limiting the generality of any of the foregoing (but subject to clauses (x) and (y) above), each Credit Party shall defend, protect, indemnify, pay and save harmless each Indemnified Party from any Claims which may be imposed on, incurred by, or asserted against any Indemnified Party under any Environmental Laws with respect to or in connection with the Real Property, any Hazardous Discharge, the presence of any Hazardous Substances affecting the Real Property (whether or not the same originates or emerges from the Real Property or any contiguous or other real estate), including any Claims consisting of or relating to the imposition or assertion of any Lien on any of the Real Property under any Environmental Laws and any loss of value of the Real Property as a result of the foregoing except to the extent such loss, liability, damage and expense is attributable to any Hazardous Discharge resulting from actions on the part of Agent or any Lender. To the extent relating to Hazardous Substances at the Real Property, the Credit Parties’ obligations under this Section 16.5 shall arise upon the discovery of the presence of any Hazardous Substances at the Real Property, whether or not any federal, state, or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Substances, in each such case except to the extent that the presence of any Hazardous Substances results from the actions on the part of the Indemnified Party (as determined by a court of competent jurisdiction in a final and non-appealable judgment). Without limiting the generality of the foregoing (but subject to clauses (x)-(z) above), this indemnity shall extend to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable fees and disbursements of counsel) asserted against or incurred by any of the Indemnified Parties by any Person under any Environmental Laws or similar laws by reason of any Credit Party’s or any other Person’s failure to comply with laws applicable to solid or hazardous waste materials, including Hazardous Substances and Hazardous Waste, or other Toxic Substances. No Indemnified Party shall be liable for any damage arising from the use by others of information relating to the Credit Parties obtained through electronic, telecommunications or other information systems, except to the extent such damages are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnified Person. This Section 16.5 shall not apply to

Taxes, other than any Taxes that represent claims, demands, liabilities, obligations, losses, damages, penalties, fines, actions, judgments, suits, costs, charges, expenses or disbursements arising from any non-Tax claim.

16.6. Notice. Any notice or request hereunder to any Credit Party may be given to Borrowing Agent at its address set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section. Any notice or request hereunder to Agent or any Lender at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section. Any notice, request, demand, direction or other communication (for purposes of this Section 16.6 only, a “Notice”) to be given to or made upon any party hereto under any provision of this Agreement shall be given or made by telephone or in writing (which includes by means of electronic transmission (i.e., “e-mail”) or facsimile transmission or by setting forth such Notice on a site on the World Wide Web (a “Website Posting”) if Notice of such Website Posting (including the information necessary to access such site) has previously been delivered to the applicable parties hereto by another means set forth in this Section 16.6) in accordance with this Section 16.6. Any such Notice must be delivered to the applicable parties hereto at the addresses and numbers set forth under their respective names in this Section 16.6 hereof or in accordance with any subsequent unrevoked Notice from any such party that is given in accordance with this Section 16.6. Any Notice shall be effective:

- (a) In the case of hand-delivery, when delivered;
- (b) If given by mail, four (4) days after such Notice is deposited with the United States Postal Service, with first-class postage prepaid, return receipt requested;
- (c) In the case of a telephonic Notice, when a party is contacted by telephone, if delivery of such telephonic Notice is confirmed no later than the next Business Day by hand delivery, a facsimile or electronic transmission, a Website Posting or an overnight courier delivery of a confirmatory Notice (received at or before noon on such next Business Day);
- (d) In the case of a facsimile transmission, when sent to the applicable party’s facsimile machine’s telephone number, if the party sending such Notice receives confirmation of the delivery thereof from its own facsimile machine;
- (e) In the case of electronic transmission, when actually received;
- (f) In the case of a Website Posting, upon delivery of a Notice of such posting (including the information necessary to access such site) by another means set forth in this Section 16.6; and
- (g) If given by any other means (including by overnight courier), when actually received.

Any Lender giving a Notice to Borrowing Agent or any Borrower shall concurrently send a copy thereof to Agent, and Agent shall promptly notify the other Lenders of its receipt of such Notice.

- (A) If to Agent or HPS at:

HPS Investment Partners, LLC
 40 West 57th Street, 33rd Floor
 New York, New York 10019
 Attention: Jeffrey Fitts, Brett Pertuz and Piero Russo
 Telephone: (212) 287 4633, (212) 287 4724 and (212) 287 4271
 Facsimile: (646) 344 4271
 Email: jeffrey.fitts@hpspartners.com;
 brett.pertuz@hpspartners.com;
 piero.russo@hpspartners.com;

deal-execution@hpspartners.com;
hpsagency@cortlandglobal.com

with a copy of non-routine notices only to (which shall not constitute notice):

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Damian Ridealgh
Telephone: (212) 310 8510
Facsimile: (212) 310 8007
Email: damian.ridealgh@weil.com

(B) If to a Lender other than Agent, to the address for the Lender as set forth in Agent's records.

(C) If to Borrowing Agent or any Borrower:

Emerge Energy Services Operating LLC
5600 Clearfork Main Street, Suite 400
Fort Worth, Texas 76109
Attention: Roy Messing, Chief Restructuring Officer
Telephone: (203) 241-6082
Facsimile: (212) 818-1551
Email: roy.messing@ankura.com
with copies to:

Insight Equity Management Company LLC
1400 Civic Place, Suite 250
Southlake, Texas 76092
Attention: Warren Bonham
Telephone: (817) 488-5917
Facsimile: (817) 488-7739
Email: wbonham@insightequity.com

Attention: Robert J. Conner, General Counsel
Telephone: (817) 865-2534
Facsimile: (817) 488-7739
Email: rconner@insightequity.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
811 Main Street, Suite 3700
Houston, Texas 77002
Attention: M. Catherine Ozdogan
Telephone: (713) 546-7494
Facsimile: (713) 546-5401
Email: catherine.ozdogan@lw.com

16.7. Survival. The obligations of Borrowers under Sections 2.2, Article III, 4.18(d), and 16.5 and the obligations of Lenders under Section 14.7, shall survive termination of this Agreement and the Other Documents and payment in full of the Obligations.

16.8. Severability. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

16.9. Expenses. Each Borrower shall reimburse Agent (and, with respect to clauses (c), (d) and (e) below, all Lenders) for all fees, costs and expenses, including the reasonable fees, costs and expenses of one lead counsel, one additional local counsel in each applicable jurisdiction or other advisors (including sales consultants and advisors, environmental and management consultants and appraisers), incurred in connection with the negotiation, preparation and administration of this Agreement or the Other Documents, the Interim Order and the Final Order and incurred in connection with:

(a) any Borrower or any other Person on behalf of any Borrower by Agent of the proceeds of any Advance;

(b) any amendment, modification or waiver of, consent with respect to, or termination of, any of this Agreement or the Other Documents or advice in connection with the syndication, if applicable, and administration of the Loans made pursuant hereto or its rights hereunder or thereunder;

(c) any litigation, contest, dispute, suit, proceeding or action (whether instituted by Agent, any Lender, any Borrower or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, this Agreement, the Other Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case or proceeding commenced by or against any Borrower or any other Person that may be obligated to Agent by virtue of this Agreement or the Other Documents; including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Advances during the pendency of one or more Events of Default; provided that in the case of reimbursement of counsel for Lenders other than Agent, such reimbursement shall be limited to one counsel for all Lenders; provided, further, that no Person shall be entitled to reimbursement under this clause (c) in respect of any litigation, contest, dispute, suit, proceeding or action to the extent any of the foregoing results from such Person's gross negligence or willful misconduct (as determined by a final non-appealable judgment);

(d) any attempt to enforce or prosecute any rights or remedies of Agent against any or all of the Credit Parties or any other Person that may be obligated to Agent or any Lender by virtue of any of this Agreement or the Other Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Advances during the pendency of one or more Events of Default; provided, that in the case of reimbursement of counsel for Lenders other than Agent, such reimbursement shall be limited to one counsel for all Lenders;

(e) any workout or restructuring of the Loans during the pendency of one or more Events of Default;

(f) the obtaining of approval of this Agreement and the Other Documents by the Bankruptcy Court;

(g) the preparation and review of pleadings, documents and reports related to the Cases and any Successor Cases, attendance at meetings, court hearings or conferences related to the Cases and any Successor Cases, and general monitoring of the Cases and any Successor Cases;

(h) efforts to (i) monitor the Advances or any of the other Obligations, (ii) evaluate, observe or assess any of the Credit Parties or their respective affairs, and (iii) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral;

(i) any lien searches or request for information listing financing statements or liens filed or searches conducted to confirm receipt and due filing of financing statements and security interests in all or a portion of the Collateral; and

(j) including, as to each of clauses (a) through (i) above, all reasonable attorneys' and other professional and service providers' fees arising from such services and other advice, assistance or other representation, including those in connection with any appellate proceedings, and all expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this Section 16.9, all of which shall be payable, on demand, by Borrowers to Agent and shall be part of the Obligations.

Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, sales consultants, financial advisors, environmental advisors, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram or telecopy charges; secretarial overtime charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services.

Any action taken by any Credit Party under or with respect to this Agreement or any Other Document, even if required under such document or at the request of Agent or Required Lenders, shall be at the expense of such Credit Party, and neither Agent nor any other Secured Party shall be required under this Agreement or any Other Document to reimburse any Credit Party or any Subsidiary of any Credit Party therefor except as expressly provided therein.

16.10. Injunctive Relief. Each Borrower recognizes that, in the event any Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, or threatens to fail to perform, observe or discharge such obligations or liabilities, any remedy at law may prove to be inadequate relief to Lenders; therefore, Agent, if Agent so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving that actual damages are not an adequate remedy.

16.11. Consequential Damages. Neither Agent nor any Lender, nor any agent or attorney for any of them, shall be liable to any Credit Party (or any Subsidiary of any such Person) for indirect, punitive, exemplary or consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations or as a result of any transaction contemplated under this Agreement or any Other Document.

16.12. Captions. The captions at various places in this Agreement are intended for convenience only and do not constitute and shall not be interpreted as part of this Agreement.

16.13. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or electronic transmission shall be deemed to be an original signature hereto.

16.14. Construction. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits thereto.

16.15. Confidentiality; Sharing Information. Agent, each Lender and each Transferee shall hold all non-public information of the Borrowers and their Subsidiaries obtained by Agent, such Lender or such Transferee pursuant to the requirements of this Agreement in accordance with Agent's, such Lender's and such

Transferee's customary procedures for handling confidential information of this nature; *provided, however*, Agent, each Lender and each Transferee may disclose such confidential information (a) to its examiners, Affiliates, outside auditors, counsel and other professional advisors, (b) to Agent, any Lender or to any prospective Transferees (provided that any prospective Transferee has agreed in writing to hold such information confidential), and (c) as required or requested by any Governmental Body or representative thereof or pursuant to legal process; provided further that (i) unless specifically prohibited by Applicable Law, Agent, each Lender and each Transferee shall use its reasonable best efforts prior to disclosure thereof, to notify the applicable Borrower of the applicable request for disclosure of such non-public information (A) by a Governmental Body or representative thereof (other than any such request in connection with an examination of the financial condition of a Lender or a Transferee by such Governmental Body) or (B) pursuant to legal process and (ii) in no event shall Agent, any Lender or any Transferee be obligated to return any materials furnished by any Borrower other than those documents and instruments in possession of Agent or any Lender in order to perfect its Lien on the Collateral once the Obligations (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted) have been paid in full and this Agreement has been terminated. Each Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to such Borrower or one or more of its Subsidiaries (in connection with this Agreement or otherwise) by any Lender or by one or more Subsidiaries or Affiliates of such Lender and each Borrower hereby authorizes each Lender to share any information delivered to such Lender by such Borrower and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such Subsidiary or Affiliate of such Lender, it being understood that any such Subsidiary or Affiliate of any Lender receiving such information shall be bound by the provisions of this Section 16.15 as if it were a Lender hereunder. Such authorization shall survive the repayment of the other Obligations and the termination of this Agreement.

16.16. Publicity. Each Borrower agrees that any references to Agent, any Lender or any of their respective affiliates made in connection with the Transactions are subject to the prior approval of Agent or such Lender, as applicable, which approval shall not be unreasonably withheld. Agent and Lenders shall not be permitted to use information related to the syndication and arrangement of the Loans in connection with marketing, press releases or other transactional announcements or updates provided to investor or trade publications, including, but not limited to, the placement of "tombstone" advertisements in publications of their choice at their own expense, without the prior written consent of Parent Guarantor (such consent not to be unreasonably withheld or delayed); provided that (I), notwithstanding anything to the contrary herein, Agent and Lenders may include references to the Loans in their marketing materials without the prior written consent of Borrowers so long as such references shall be limited to: (i) a description of the Transactions, including industry type; (ii) a reproduction of any Borrower's logo; (iii) a description of Agent's and/or Lenders' roles in the Transactions (e.g., Agent, arranger); (iv) the date and amount of the Loans; and (v) the names of the Borrowers and the other Credit Parties, and (II) upon the consent by Parent Guarantor, Agent and Lenders may make and distribute reproductions of such consented-to marketing, press releases or other transactional announcements or updates.

16.17. Certifications From Banks and Participants; USA PATRIOT Act.

(a) Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to the Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA PATRIOT Act and the applicable regulations: (1) within 10 days after the Closing Date, and (2) as such other times as are required under the USA PATRIOT Act.

(b) The USA PATRIOT Act requires all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an “account” with such financial institution. Consequently, Lenders may from time to time request, and Borrowers shall provide to any such Lender, each Borrower’s name, address, tax identification number and/or such other identifying information as shall be necessary for such Lender to comply with the USA PATRIOT Act and any other Anti-Terrorism Law.

16.18. Anti-Terrorism Laws. Each Credit Party represents and warrants to the Agent, as of the date of this Agreement, the date of each Advance, the date of any renewal, extension or modification of this Agreement, and at all times until the Termination Date, that: (i) no Covered Entity is a Sanctioned Person and (ii) no Covered Entity, either in its own right or through any third party, (a) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law, (b) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law or (c) engages in any dealings or transactions prohibited by, any Anti-Terrorism Laws.

16.19. Concerning Joint and Several Liability of Borrowers.

(a) Each of Borrowers is accepting joint and several liability hereunder in consideration of the financial accommodations to be provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of Borrowers and in consideration of the undertakings of each of Borrowers to accept joint and several liability for the obligations of each of them.

(b) Each of 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, it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each of Borrowers without preferences or distinction among them.

(c) If and to the extent that any of 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.

(d) The obligations of each Borrower under the provisions of this Section 16.19 constitute full recourse obligations of such Borrower, enforceable against it to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided herein, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Advance made under this Agreement, notice of occurrence of any Event of Default, or of any demand for any payment under this Agreement (except as otherwise provided herein), notice of any action at any time taken or omitted by any Lender under or in respect of any of the Obligations, any requirement of diligence and, generally, all demands, notices and other formalities of every kind in connection with this Agreement. Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by any Lender at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by any Lender in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Lender, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with the Applicable Laws or regulations thereunder which might, but for the provisions of this Section 16.19, afford grounds for terminating, discharging or relieving such Borrower, in whole or in part, from

any of its obligations under this Section 16.19, it being the intention of each Borrower that, so long as any of the Obligations remain unsatisfied, the obligations of such Borrower under this Section 16.19 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 16.19 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower or any Lender. The joint and several liability of Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, membership, constitution or place of formation of any Borrower or any Lender.

(f) The provisions of this Section 16.19 are made for the benefit of the Lenders and their respective successors and assigns, and may be enforced by any such Person from time to time against any of Borrowers as often as occasion therefor may arise and without requirement on the part of any Lender first to marshal any of its claims or to exercise any of its rights against any of the other Borrowers or to exhaust any remedies available to it against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy. The provisions of this Section 16.19 shall remain in effect until all the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by any Lender upon the insolvency, bankruptcy or reorganization of any of Borrowers, or otherwise, the provisions of this Section 16.19 will forthwith be reinstated in effect, as though such payment had not been made.

(g) Notwithstanding any provision to the contrary contained herein or in any other of the Other Documents, to the extent the joint obligations of a Borrower shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of each Borrower hereunder shall be limited to the maximum amount that is permissible under Applicable Law (whether federal or state and including, without limitation, the federal Bankruptcy Code).

(h) Borrowers hereby agree, as among themselves, that if any Borrower shall become an Excess Funding Borrower (as defined below), each other Borrower shall, on demand of such Excess Funding Borrower (but subject to the next sentence hereof and to subsection (B) below), pay to such Excess Funding Borrower an amount equal to such Borrower's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, assets, liabilities and debts of such Excess Funding Borrower) of such Excess Payment (as defined below). The payment obligation of any Borrower to any Excess Funding Borrower under this Section 16.19(h) shall be subordinate and subject in right of payment to the prior payment in full of the Obligations of such Borrower under the other provisions of this Agreement, and such Excess Funding Borrower shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such Obligations. For purposes hereof, (i) "Excess Funding Borrower" shall mean, in respect of any Obligations arising under the other provisions of this Agreement (hereafter, the "Joint Obligations"), a Borrower that has paid an amount in excess of its Pro Rata Share of the Joint Obligations; (ii) "Excess Payment" shall mean, in respect of any Joint Obligations, the amount paid by an Excess Funding Borrower in excess of its Pro Rata Share of such Joint Obligations; and (iii) "Pro Rata Share," for the purposes of this Section 16.19(h), shall mean, for any Borrower, the ratio (expressed as a percentage) of (A) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Borrower (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Borrower hereunder) to (B) the amount by which the aggregate present fair salable value of all assets and other properties of such Borrower and all of the other Borrowers exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Borrower and the other Borrowers hereunder) of such Borrower and all of the other Borrowers, all as of the Closing Date (if any Borrower becomes a party hereto subsequent to the Closing Date, then for the purposes of this Section 16.19(h) such subsequent Borrower shall be deemed to have been a Borrower as of the Closing Date and the information pertaining to, and only pertaining to, such Borrower as of the date such Borrower became a Borrower shall be deemed true as of the Closing Date) notwithstanding the payment obligations imposed on

Borrowers in this Section, the failure of a Borrower to make any payment to an Excess Funding Borrower as required under this Section shall not constitute an Event of Default.

16.20. Non-Applicability of Chapter 346. The parties hereto hereby agree that, except for the opt-out provisions of Section 346.004 thereof, the provisions of Chapter 346 of the Texas Finance Code (regulating certain revolving credit loans and revolving tri-party accounts) shall not apply to this Agreement, any of the Other Documents, or the Obligations.

16.21. BORROWERS' WAIVER OF RIGHTS UNDER TEXAS DECEPTIVE TRADE PRACTICES ACT. EACH BORROWER HEREBY WAIVES ANY RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION § 17.41 *ET SEQ.* TEXAS BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF THE BORROWERS' OWN SELECTION, EACH BORROWER VOLUNTARILY CONSENTS TO THIS WAIVER. EACH BORROWER EXPRESSLY WARRANTS AND REPRESENTS THAT EACH BORROWER (A) IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION RELATIVE TO AGENT, AND (B) HAS BEEN REPRESENTED BY LEGAL COUNSEL IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE OTHER DOCUMENTS.

16.22. Parties Including Trustees; Bankruptcy Court Proceedings. This Agreement, the Other Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any Other Document shall be binding upon each Credit Party, the estates of the Credit Parties, and any trustee, other estate representative or any successor in interest of the Credit Parties in the Cases or any Successor Cases, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the Other Documents shall be binding upon, and inure to the benefit of, the successors of Agent and Lenders and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the Other Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Cases or any other bankruptcy case of any Credit Party to a Successor Case or in the event of dismissal of the Cases or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that Agent files financing statements or otherwise perfect its Liens under applicable law. No Credit Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the Other Documents without the prior express written consent of Agent and Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Credit Party without the prior express written consent of Agent and Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Credit Party, Agent and 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 Documents.

16.23. Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Other Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Other Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Other Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

XVII. LOAN GUARANTY.

17.1. Guaranty. Each Guarantor hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Obligations and all costs and expenses, including, without limitation, all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Agent and the Lenders in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, the Borrowers, any Guarantor or any other guarantor of all or any part of the Obligations (such costs and expenses, together with the Obligations, collectively the "Guaranteed Obligations"; provided however that, the definition of "Guaranteed Obligations" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Hedge Liabilities of such Guarantor for purposes of determining any obligations of any Guarantor). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

17.2. Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Guarantor waives any right to require the Agent or any Lender to sue the Borrowers, any Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

17.3. No Discharge or Diminishment of Loan Guaranty. (a) Except as otherwise provided for herein, the obligations of each Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of the Borrowers or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Guarantor may have at any time against any Obligated Party, the Agent, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Agent or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement

to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of the Borrowers for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Agent or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

17.4. Defenses Waived. To the fullest extent permitted by applicable law, each Guarantor hereby waives any defense based on or arising out of any defense of the Borrowers or any Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of the Borrowers, any Guarantor or any other Obligated Party, other than the indefeasible payment in full in cash of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Each Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Obligated Party or any security.

17.5. Rights of Subrogation. No Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Obligated Party or any collateral, until the Credit Parties and the Guarantors have fully performed all their obligations to the Agent and the Lenders.

17.6. Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrowers or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Agent and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrowers, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Guarantors forthwith on demand by the Agent.

17.7. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Agent or any Lender shall have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

17.8. Termination. Each of the Lenders may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five (5) days after it receives written notice of termination from any Guarantor, in its sole discretion. Notwithstanding receipt of any such notice, each Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 17.8 shall be deemed to constitute a waiver of, or eliminate, limit, reduce or otherwise impair any rights or remedies the Agent or any Lender may have in respect of, any Default that shall exist under Article VII hereof as a result of any such notice of termination.

17.9. Taxes. Each payment of the Guaranteed Obligations will be made by each Guarantor in accordance with Section 3.10, as if such Guarantor was a Credit Party.

17.10. Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law. In determining the limitations, if any, on the amount of any Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

17.11. Contribution.

(a) To the extent that any Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and the Guaranteed Obligations (other than Unliquidated Obligations that have not yet arisen), and all Commitments have terminated or expired, and this Agreement has terminated, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Guarantor shall be equal to the excess of the fair saleable value of the property of such Guarantor over the total liabilities of such Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 17.11 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 17.11 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Guarantors against other Guarantors under this Section 17.11 shall be exercisable upon the full and indefeasible payment of the Guaranteed Obligations in cash (other than Unliquidated Obligations that have not yet arisen) and the termination or expiry, on terms reasonably acceptable to the Agent, of the Commitments hereunder and the termination of this Agreement.

17.12. Liability Cumulative. The liability of each Credit Party as a Guarantor under this Article XII is in addition to and shall be cumulative with all liabilities of each Credit Party to the Agent and the Lenders under this Agreement and the Other Documents to which such Credit Party is a party or in respect of any obligations or liabilities of the other Credit Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

[Remainder of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

PARENT GUARANTOR:

EMERGE ENERGY SERVICES LP

By: EMERGE ENERGY SERVICES GP LLC,
its general partner

By: _____
Name: _____
Title: _____

BORROWERS:

**EMERGE ENERGY SERVICES OPERATING
LLC**

By: _____
Name: _____
Title: _____

SUPERIOR SILICA SANDS LLC

By: EMERGE ENERGY SERVICES
OPERATING LLC, its sole member

By: _____
Name: _____
Title: _____

GUARANTOR:

**EMERGE ENERGY SERVICES FINANCE
CORPORATION**

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO DIP CREDIT AGREEMENT]

AGENT AND COLLATERAL AGENT:

HPS INVESTMENT PARTNERS, LLC

By: _____
Name:
Title:

[SIGNATURE PAGE TO DIP CREDIT AGREEMENT]

LENDER:

[insert signature blocks for lenders]

By: _____
Name:
Title:

[SIGNATURE PAGE TO DIP CREDIT AGREEMENT]

Exhibit B

Approved Budget

